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DRAWN UNDER THE

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		2400 " " -	- 1 8 0
		3200 " " -	- 1 14 0
14. Register of Private Graves in Consecrated Ground - -	{	4000 " " -	- 2 0 0
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		2400 " " -	- 1 8 0
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		4000 " " -	- 2 0 0
		800 Grave Spaces -	- 0 16 0
		1600 " " -	- 1 2 0
		2400 " " -	- 1 8 0
		3200 " " -	- 1 14 0
		4000 " " -	- 2 0 0
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THE
BURIAL BOARD ACTS

OF
ENGLAND AND WALES,

15 & 16 VICT. c. 85.		17 & 18 VICT. c. 87.
16 & 17 VICT. c. 134.		18 & 19 VICT. c. 128.
20 & 21 VICT. cc. 35, 81.		

WITH
INTRODUCTION, NOTES, CASES, AND INDEX.

BY
WM. CUNNINGHAM GLEN,
BARRISTER-AT-LAW, AND OF THE POOR LAW BOARD.

LONDON:
SHAW AND SONS, FETTER LANE,
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PREFACE.

THE exigencies of the Public call for an entirely new edition of the Acts which regulate extra-mural interments. This work has therefore been prepared with the view of furnishing Burial Boards and their officers with a practical guide in the right execution of their duties; Boards of Guardians with an exposition of the law relating to the burial of poor persons at the cost of the poor rates in new burial grounds provided under the Burial Board Acts; and the Public with lucid information as to the nature of the new law in regard to burial grounds and burials. The Introduction treats of the law with respect to Burials generally, and particularly of the new Burial Acts. These Acts are then given *in extenso*, with practical notes and references; together with

the whole of the decisions of the courts upon those Acts up to the present time. The Appendix contains the regulations and instructions issued by the Secretary of State for the Home Department under the 15 & 16 Vict. c. 85, 16 & 17 Vict. c. 134, 17 & 18 Vict. c. 87, and 18 & 19 Vict. c. 128. The Index is voluminous.

GWYDYR HOUSE,
Whitehall.

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THE

BURIAL OF THE DEAD.

CEMETERIES or burial grounds apart from churches are not a new institution. When churches were first erected in England, no part of the ground surrounding them was originally reserved for the purposes of sepulture; but a place at a distance was appointed in which to bury the dead. This was in accordance with the Roman law, which required that the dead should be buried without the walls of cities. At first they were buried by the way side; but afterwards some inclosure was assigned for the purpose. About the beginning of the seventh century the Augustine Monastery at Canterbury was built without the walls, in order (as Ethelbert and St. Augustine intimate in their charters) that it might be a dormitory (*i.e.* place where their bodies may sleep until the resurrection) to them and their successors, the Kings and Archbishops for ever. The practice of burying at a place remote from the church appears to have continued in England until about the year 750, when Cuthbert, Archbishop of Canterbury, introduced from Rome the custom of having churchyards attached to churches for the greater convenience of the priesthood in offering prayers for the dead.

Institution
of church-
yards.

Burial under
the Roman
law.

Burial in
England.

Churchyards were carefully inclosed and consecrated, and appropriated for the burial of those who had been entitled to attend divine service in those churches, and who now became entitled to render back into those places their remains to earth, the common mother of mankind, without payment for the ground which they were to occupy, or for the pious offices which solemnized the act of interment (Lord Stowell in *Gilbert v. Buzzard*, 2 Cons. Rep. 343; 3 Phill. Rep. 348). Previous to that time, however, a practice had obtained of burying within churches, either in the nave or body of the church, or under arches by the walls, and sometimes in vaults in the chancels, or under the altar itself. Such a practice, however, was not allowed, and never could be claimed as a right by the parishioners generally, and was restrained by authority, except in cases of persons who were in the priesthood or who were eminent for their piety, and considered deserving of burial within the body of the church. The custom of burying in churches was never much countenanced after the Reformation, for it was not only injurious to the fabric of the church but was prejudicial to the health of the parishioners when they were assembled in the church. Lord Stowell, in *Gilbert v. Buzzard*, said: "The practice of sepulture has varied with respect to the place where performed. In ancient times caves seem to have been in high request; then gardens or other private demesnes of proprietors; inclosed spaces out of the walls of towns, or by the sides of roads (*siste viator*); and, finally, in Christian countries, churches and churchyards, where the deceased could receive the pious and charitable wishes

of the faithful, who resorted thither on the various calls of public worship." And again he says: "The rule of law which says that every man has a right to be buried in his own churchyard, is to be found most certainly in many of our authoritative text writers." Though, however, every person may as of right be buried in the churchyard of the parish wherein he dies, without any payment being made for breaking the soil, a fee may be due to the minister, clerk, or sexton, by prescription or immemorial custom (*Sir Simon Degge's Parsons Law*, part 1, c. 12). The clergyman is bound by law to bury the corpses of parishioners in the churchyard, but he is not bound to bury in any particular part of the churchyard, as he and the churchwardens may exercise a discretion in that respect. Consequently, if the clergyman is asked to do that which the law does not compel him to do, he may refuse, except upon certain conditions being complied with. Hence the court will not grant a mandamus to compel a rector to bury the corpse of a parishioner in a vault or in any particular part of the churchyard (*Ex parte Blackmore*, 1 B. & Ad. 122). A mandamus lies to compel a clergyman to bury the corpse of a parishioner; but if he has not refused to bury at all, but only to bury in a particular mode, or in a particular part of the churchyard, no mandamus will lie (*R. v. St. Aubyn*, 8 L. J. R., K. B. 384, S. C.; 1 B. & Ad. 122). Strangers, or persons who have died out of the parish, may not, as of right, be buried in the churchyard of another parish than that wherein they died, for there can be no absolute claim of that kind (per Lord Stowell in *Bordin v. Calcott*,

Right to
burial with-
out payment.

Burial of
non-parish-
ioners.

1 Cons. Rep. 17); but a stranger may be so buried with the consent of the churchwardens, if the burial do not cause actual inconvenience to the parishioners by pre-occupying more of the ground than they themselves require (*Littlewood v. Williams*, 6 Taunton, 277).

The Canon.

By the 68th canon, no minister shall refuse or delay to bury any corpse that is brought to the church or churchyard, convenient warning being given him thereof before, in such manner and form as is prescribed in the Book of Common Prayer, except the person deceased "were denounced excommunicated *majori excommunicatione* for some grievous and notorious crime, and no man able to testify of his repentance." The minister is also

Burial service.

bound to read the burial service in the manner and form prescribed by the Book of Common Prayer, over the corpse of any person who was baptized with water and in the name of the Holy Trinity, if required so to do, though the deceased was never baptized otherwise than by a layman; for such a person cannot be said to die unbaptized within the meaning of the Rubric for the burial of the dead, as incorporated into the 13 & 14 Car. 2, c. 4 (*Escott v. Martin*, 6 Jur. 765). It is also the

Burial fees by the custom.

duty of a minister of the Established Church to bury the child of a person who is a dissenter from the church (*Kemp v. Hicks*, 3 Phill. 264). He cannot, therefore, either by the canon or by the common law demand anything for the burial; but, as a fee may be due by prescription or immemorial usage (*Canthorne v. Andrews*, Willes, 536), the laity are compellable to observe the custom; and though the minister may not refuse to bury because

the custom is not observed, he may afterwards recover, according to the custom of the particular parish. Properly this is a matter of spiritual cognizance; but nevertheless the common law courts reserve to themselves the right of determining the custom if it be denied; and if it be not denied, whether it is a reasonable custom.

Enforcement of observance of custom as to fees.

The accustomed fee to the minister for breaking the soil of the churchyard is for the most part 3s. 4d., and for breaking the floor in the chancel 6s. 8d. (*Degge's Parsons Law*, p. 146). Any fee greatly in excess of these amounts, as a fee of 10s. 6d. for breaking the soil, would be open to much question as to its being the fee recognized by the custom of the parish. It is said that the fee for burial belongs to the minister of the parish in which the person deceased heard divine service and received the sacraments, wheresoever the corpse be buried; which is agreeable to the rule of the common law, which says that every one, after the manner of the patriarchs, shall be buried in the sepulchre of his fathers; nevertheless, that if any one desires to be buried elsewhere, the same shall not be hindered, provided that the accustomed fee be paid to the minister of the parish where he died, or at least a third part of which shall be given to the place where he shall be buried (*Gibson*, 452). There must, however, be custom to support this claim on the part of the minister of the parish of which the person to be buried was a parishioner.

Their amount.

To whom they belong.

The following observations of Lord Stowell in *Gilbert v. Buzzard*, with reference to the claim for burial fees, may be here quoted: "Very ancient canons," he said, "forbid the taking of money for

interment, upon the notion that consecrated grounds are among the *res sacrae*, and that money payments for them were therefore acts of simoniacal complexion; but this has not been the way of considering the matter since the Reformation, for the practice goes up to at least nearly as far; it appears founded upon reasonable considerations, and is subjected to the proper control of an authority of inspection. In populous parishes, where funerals are very frequent, the expense of keeping churchyards in an orderly and seemly condition is not small, and that of purchasing new ones when the old ones become surcharged, is extremely oppressive. To answer such charges, both certain and contingent, it surely is not unreasonable that the actual use should contribute when it is called for. At the same time, the parishes are not left to carve for themselves by imposing these rates; they are submitted to the examination of the ordinary, who exercises his judgment and expresses the result by a confirmation of their propriety, in terms of very guarded caution. It is perhaps not easy to say where the authority could be more properly lodged, or more conveniently exercised."

Tolling bells. With regard to the tolling of bells it is enjoined by the 67th canon, "and when any is passing out of this life a bell shall be tolled, and the minister shall not then slack to do his last duty. And after the party's death, if it so fall out, there shall be rung no more than one short peal, and one other before the burial, and one other after the burial."

Tombs and monuments. Concerning the building or erecting of tombs, sepulchres, or monuments in memory of the deceased in church, chancel, common chapel, or churchyard,

in convenient manner, Lord Coke says, it is lawful, for it is the last work of charity that can be done for the deceased, who, whilst he lived, was a lively temple of the Holy Ghost, with a reverend regard and christian hope of a joyful resurrection (3 *Inst.* 202), and the defacing of such is punishable at common law, at the suit of the persons who placed or erected them, during their lives, and after their decease the heir of such person shall have the action (*ib.*). In *Horner v. Brewster* (3 Bing. 136), trespass was maintained for taking away a tombstone from a churchyard and obliterating an inscription made upon it, at the suit of the person by whom it was erected.

The churchyard as well as the church is the freehold of the minister, subject to the right of the parishioners for interment; but ancient custom often annexes fees for erecting a stone or anything else by which the grave may be protected, and the memory of the person interred preserved. It is, Lord Stowell says, no general common law right; but custom will interpose, and where it is shown to be customary, such practice will be supported. Fees for erecting monuments, &c.

The right to charge a fee in such case where there is no custom has never received any judicial decision, and it has been questioned by some. As, however, the freehold is in the incumbent; and his leave is necessary before the tomb or gravestone can be erected, it has been the practice in most parishes for the incumbent to charge a prescribed fee, varying in some cases with the station of the deceased, the size of the tomb or gravestone.

There is no positive rule of law or religion which Manner of burial.

regulates the manner in which a dead body shall be deposited in the grave. Usually a wooden coffin is used in burials in open graves, and in vaults leaden coffins are used to contain the remains. The law on the subject will be collected from the judgment of Lord Stowell, in *Gilbert v. Buzzard* (2 Cons. Rep. 343; 3 Phill. 348), which was a suit brought in the Ecclesiastical Court by a relative of a deceased person against the churchwardens of the parish of St. Andrew's, Holborn, to try the right of the parish to prevent the deceased being interred in the parish churchyard in an iron coffin. Lord Stowell, in delivering judgment in that case, said, "that a body be carried to the grave in a state of nakedness would be a real offence to the living, as well as an apparent indignity to the dead. Some coverings have been deemed necessary in all civilized and christian countries, but chests containing the bodies, and descending into the grave along with them, and there remaining in decay, do not plead the same degree of necessity, nor the same universal use. In the western part of Europe the use of sepulchral chests has been pretty general. An attempt was made in our time by an European sovereign, to abolish their use in his Italian dominions, much commended by some philosophers, on the physical ground that the dissolution of bodies would be accelerated, and the virulence of the fermentation disarmed, by the speedy absorption of all noxious particles into the surrounding soil. Whatever might be the truth of the theory, the measure was enforced by regulations prescribing that bodies of every age and of both sexes, of all ranks and conditions, and of all species of mental disease, and every

form of death, however hideous and loathsome, should be nightly tumbled, naked and in the state they died, at the sound of a bell, into a night cart, and thence carried to a pit beyond the city walls, there to rot in one mass of undistinguished putrefaction. This system was so strongly encountered by the established habits, as well as by the natural feelings, of a highly-civilized and polished people, that it was deemed advisable, at no great distance of time, to bury the edict itself by a total revocation. In the South American establishments of the European nations, coffins do not appear to be used. In our country the use of coffins is extremely ancient. They are found of great apparent antiquity, of various forms, and of various materials; of wood, of stone, of metals, of marble, and even of glass. Coffins, says Dr. Johnson, are made of wood and various other matters. From the original expense of some of the materials, or labour necessary for the preparation of them for this use, or from both, it is evident that several of them must have been occupied by persons who had filled the loftiest stations of life. In modern practice, chests or coffins of wood or lead, or both, are commonly used for persons who can afford to pay for them. For persons of abject poverty, whom the civil law distinguishes by the title of the *misera-biliter egeni*, what is called a *shell* is used, and which I understand to be an imperfect coffin, and in very populous parishes is used successively for different individuals, unless charity, public or private, supplies them with a better. Persons dying at sea are, I believe, usually committed to the deep in their bed clothes and hammock, but I am not aware

that any of these are nominally and directly required. I observe that in the funeral service in the Church of England, there is no mention, and indeed, as I should rather collect, a studied avoidance of the mention of coffins. It is throughout the whole of that service the *corpse* or the *body*. The officiating priest is to meet the *corpse* at the gate of the churchyard; at certain parts of the service dust is thrown, not upon the coffin, but upon the *body*; certain parts of the service are to be recited whilst the *corpse* is making ready to be put into the grave. I observe likewise that in old tables of parish fees a distinction is stated between coffined funerals and uncoffined funerals in point of payment. There is one of 1627, quoted by Sir Henry Spelman, in his *Tract de Sepultura*, where a certain sum is charged for coffined burials, and half of the same sum for uncoffined burials, and expressly under these general heads of coffined and uncoffined funerals, from whence I draw this conclusion of fact, that uncoffined funerals were at that time by no means so unfrequent as not to require a particular notice and provision."

Burial in the parish churchyard, as has been shown, is a common law right inherent in every parishioner; the mode of burial is, however, of ecclesiastical cognizance; and therefore a mandamus will not issue to inter the body of a parishioner in an iron coffin (*R. v. Coleridge*, 2 Barn. & Ald. 806; 1 Chit. 588). But Abbott, C. J., in reference to that case, said: If a clergyman should absolutely refuse to bury the body of a dead person, brought for interment *in the usual way*, I am by no means

prepared to say that this court would not grant a mandamus to compel him to inter the body.

After burial the body cannot be again taken up for the purpose of being removed elsewhere and again buried, without first obtaining a faculty from the ordinary (*Gibson*, 454); and it is a misdemeanor at common law to enter an unconsecrated burial ground, and without the knowledge or consent of the owners of it or authority of any kind, to dig up and carry away a corpse buried in such ground, even although the person committing the act may have been actuated by motives of affection and respect to the deceased and of religious duty, and have conducted the removal decently (*R. v. Sharpe*, 26 L. J. R. n. s., M. C. 47). It is also an indictable offence to take up dead bodies out of a churchyard for the purposes of dissection (*Rex v. Gilles*, Russ. & Ry. 366). The removal of a dead body, after burial to another place of sepulture may now take place under a secretary of state's licence.

Disinterring
after burial.

The coroner may direct the exhumation of any dead body, for the purpose of holding an inquest upon it to inquire into the cause of the death of the person buried, when it appears to have been attended with suspicious circumstances.

By order of
the coroner.

No one may oppose the burial of a dead body in the churchyard of the parish wherein the person may have died; and it has been held that information was grantable against a person for opposing the burial of a parishioner in the churchyard; but as to refusing to read the burial service over the deceased because he was never baptized, the court would

Obstructing
burial.

- not interfere, that being a matter cognizable in the ecclesiastical court (*R. v. Taylor*, Burn's Ecc. Law, 258). The law, however, makes special provision with regard to persons found *felo de se* upon inquisition, and murderers. Formerly the body of a *felo de se* was ignominiously buried in the highway, with a stake driven through it; but now the body must be privately interred by direction of the coroner or other officer, in the churchyard or other burial ground of the parish or place in which the remains of the person might by the law of England be interred, within four hours from the finding of the inquisition and between the hours of nine and twelve o'clock at night, and the rites of Christian burial shall not be performed on the interment of the remains of any person found *felo de se*.
- Felo de se.** 4 Geo. 4, c. 52.
- Murderers.** The bodies of murderers on the other hand were, by the 9 Geo. 4, c. 31, either to be dissected or hung in chains, as to the court which tried the offender should seem meet; but this was altered by the 2 & 3 Will. 4, c. 75, s. 16, which directed that the bodies of murderers should either be hung in chains, or be buried within the precincts of the prison in which the prisoner shall have been confined after conviction, as to the court should seem meet. The 4 & 5 Will. 4, c. 26, s. 1, subsequently abolished the practice of hanging the bodies of criminals in chains.
- Who bound to bury.** The common law casts upon the person under whose roof a death takes place the duty of providing sepulture for the body, and of carrying it to the grave decently covered; for such person cannot keep the body unburied, neither can he do anything to prevent christian burial; he cannot cast out the

body to do violence to the feelings and health of the living, neither can he be permitted to carry it uncovered to the grave. This duty of providing burial for the dead extends not only to private persons but to public bodies also; and therefore when the death takes place in an hospital for the cure of diseases or other public establishment, the obligation of burying the body is imposed upon the governing body of the hospital or establishment (*R. v. Stewart*, 12 A. & E. 773).

If a parent has the means of providing Christian burial for the body of his child he is bound to do so; but he is not liable to be indicted for a nuisance if he has not the means of burying it, and this even though he could obtain a loan of money to enable him to provide for the burial; for according to *R. v. Vann* (21 L. J.R. n. s., M. C. 39), a person is not bound to accept a loan and render himself liable to be proceeded against and lose his liberty, and be deprived of the means of maintaining his family by incurring a debt.

Passing over the provisions made by the Church Building Acts and the New Parishes Acts for providing additional burial grounds in large and populous parishes, the incorporated Burial Board Acts are now to be considered, and in order that the scheme of them may be more readily understood, their various analogous provisions are succinctly brought into juxtaposition in the following pages.

The first of those Acts, the 15 & 16 Vict. c. 85, which was passed in 1852, was originally confined to the metropolis, but in the following year, with the exception of certain clauses, it was extended to all districts beyond the metropolis. Further provision

was made for the burial of the dead in borough towns by the 17 & 18 Vict. c. 87; and the laws concerning the burial of the dead were again further amended by the 18 & 19 Vict. c. 128, and the 20 & 21 Vict. cc. 35 & 81. The subject of the following pages, therefore, naturally resolves itself into the burial of the dead in the metropolis; in borough towns; in places under local boards of health; and in other places. Each will be considered in the order of sequence, and then the provisions of the several Acts which are of general application.

The Metro-
polis.
15 & 16 Vict.
c. 85, s. 2.

18 & 19 Vict.
c. 128, s. 1.

15 & 16 Vict.
c. 85, s. 3.

If it should appear to Her Majesty in council, on a representation from one of Her Majesty's principal secretaries of state, that for the protection of public health burials in any part or parts of the metropolis should be wholly discontinued, or discontinued subject to any exception or qualification, it shall be lawful for Her Majesty by and with the advice of her privy council to order (which order may be subsequently varied by a like order), that after a time to be limited, burials in such part or parts of the metropolis shall be discontinued wholly, or subject to any exceptions or qualifications. Before such an order could be issued, however, it is necessary that certain notices in regard thereto should be published in the London Gazette and affixed on the doors of the churches and chapels of the parishes to be affected thereby; and, in the case of any burial ground of a parish, that notice of the intended representation to Her Majesty in council should be given to the incumbent and vestry clerk of the parish. But no such order shall extend to burial grounds of Quakers or Jews, or non-parochial

grounds belonging to private persons, unless they are expressly mentioned therein. After the time 1b. s. 4. mentioned in the order of discontinuance, any person burying a dead body contrary to its provisions shall be guilty of a misdemeanor; and the body of 1b. s. 5. any parishioner or inhabitant of a parish the burial ground whereof has been closed, shall not be buried in a burial ground within the metropolis belonging to any other parish, save where the body of any of the family or relatives of such parishioner has been interred in such burial ground, and the relatives or other persons having the care or direction of the funeral shall so desire; and persons having the care of any such burial ground knowingly offending in this respect shall be guilty of a misdemeanor. The 1b. s. 6. right of burying in vaults or under any church or chapel is, however, subject to the licence of the secretary of state, preserved in certain cases; and the Act 1b. s. 7. is not to apply to the discontinuance of burials in any of the cemeteries mentioned in Schedule B., or in any burial ground to be thereafter provided; neither 1b. s. 8. shall it extend to prevent burials in St. Paul's or Westminster Abbey under the royal sign manual. And as 1b. s. 9. regards providing new burial grounds, it is required, that there shall be none such provided within two miles of any part of the metropolis without the previous approval of the secretary of state.

The commissioners of sewers of the city of City of London burial board. 1b. s. 43. London are constituted the burial board for the parishes within the limits of the city of London and the liberties thereof; and those commissioners having constructed a large and spacious cemetery in the parish of Little Ilford in Essex, special pro- 30 & 31 Vict. c. 35. vision is made for the regulation thereof, and for

Brompton
cemetery.

the fees to be paid on interments therein, and the application of those fees. The general board of health under the Metropolitan Interments Act, 1850, took proceedings for the purchase of the Brompton Cemetery, and special provision has therefore been made with regard to the completion of the purchase of that cemetery. Those provisions, however, it is not deemed necessary to notice at any length in this place; they will be found in ss. 45 to 48 of the 15 & 16 Vict. c. 85.

30 & 31 Vict.
c. 61, s. 10.

With regard to the other cemeteries belonging to companies in the neighbourhood of the metropolis, the Queen in council may make regulations for the protection of the public health, and for the maintenance of public decency in respect of all burials in common graves in such cemeteries.

Fees on
pauper
funerals.
15 & 16 Vict.
c. 85, s. 49.

Where any body is buried at the expense of any union or parish in any of the cemeteries belonging to public companies in the neighbourhood of the metropolis, the fee to be paid in respect thereof to the incumbent of the parish from which the body is removed for interment is not to exceed one shilling; but where a larger sum is now paid, it is not to exceed that sum, and in no case to exceed two shillings and sixpence.

Places be-
yond the
metropolis.
16 & 17 Vict.
c. 134, ss. 1,
2, 3, 4, 5, 6.

On a representation of the secretary of state, Her Majesty in council may restrain the opening of new burial grounds and order the discontinuance of burials in any city or town, or within any other limits, or in any burial grounds; the proceedings, restrictions and powers in such case are for the most part similar to those applicable to parishes in the metropolis. All the provisions in the 15 & 16 Vict. c. 85, from s. 10 to s. 42 (both inclusive), and also

16 & 17 Vict.
c. 134, s. 7.

in ss. 44, 50, 51 & 52, are extended and made applicable to and in respect of any parish not in the metropolis.

Upon the petition of the town council of any borough, Her Majesty by order in council may order that power shall be vested in the council of such borough for providing places of burial; and upon the making of such order, if the town council shall decide upon providing one or more burial grounds, such town council shall be a burial board for that purpose, and the provisions of the Act 15 & 16 Vict. c. 85, mentioned in the 16 & 17 Vict. c. 134, s. 7, except the provisions relating to the constitution, incorporation, meetings, entries of proceedings, and accounts of burial boards, are extended and made applicable to the borough and the town council and to any burial grounds, &c. which may be provided by such council; but in that case no approval, sanction or authorization of the vestry of any parish shall be requisite. The expenses are to be paid out of the borough fund or borough rates; and any surplus funds are to be applied in aid of that fund instead of in aid of the poor rate; or the money may be raised by the council if they think fit by means of a separate rate, to be called a burial rate, to be charged upon all property within the borough liable to be charged to the borough rate. In the execution and exercise of their duties, powers and authorities as a burial board, the council is to act in like manner as in the execution of the Municipal Corporations Act; they are to take conveyances and hold land in the name of the body corporate; and cannot sell lands purchased for burial grounds except with the approbation of the Lords of Her

Borough
towns.
17 & 18 Vict.
c. 87, s. 1.

Ib. s. 2.

Expenses
how to be
defrayed.
Ib. s. 3.

20 & 21 Vict.
c. 81, s. 22.

Their
powers.
17 & 18 Vict.
c. 87, s. 6.

To purchase
and sell
lands.

Borough
lands.
Ib. s. 11.

Burial
ground to
be deemed
the burial
ground of
parishes in
boroughs.
Ib. s. 7.

Payments
for inter-
ments.
Ib. s. 8.

Exemption
of parts of
borough,
when.
Ib. s. 9.

Fees.
Ib. s. 10.

Local boards
of health.
18 & 19 Vict.
c. 128, s. 20.
Ib. s. 19.

Majesty's Treasury. The town council may appropriate land belonging to the borough as a burial ground; but if it be subject to any charitable use, it shall be taken only on such conditions as the Court of Chancery shall appoint and direct. The burial ground provided by the town council is to be deemed to be provided for such parish or parishes wholly or in part situate in the borough as the town council shall determine, and the council may fix a higher rate of payment for interments, &c. in respect of outlying parts of any parish which is partly situate within the borough. Where, previously to the making of an order in council in relation to any borough, any parish, wholly or partly situate therein, is provided with a sufficient burial ground, such parish may be excepted from the order, and in such case, if a rate be necessary, a separate rate shall be made on the rest of the borough. The power of the vestry, with consent of the bishop of the diocese, of fixing and revising the fees to be paid to the incumbents, clerks and sextons, in the case of the burial ground of a borough, is transferred to the council thereof, to be exercisable by them with the like consent.

Local boards of health may exercise all the powers, rights and privileges which are or can be exercised by any burial board; and nothing in any of the Burial Acts shall in anywise abridge, lessen, or defeat any power, right or privilege of any local board of health, being the burial board of a borough, created or to exist under the authority of any local Act of parliament. Under the Public Health Act, 1848 (s. 8), the state of burial grounds in a district proposed to be brought under that Act may be

made the subject of a preliminary inquiry by the general board of health; but that Act does not provide effectually against the evils arising from the burial of the dead amongst the homes of the living. Upon the certificate of the general board of health that any burial ground is dangerous to health, and that means of interment exist within a convenient distance, further interment therein was to be prohibited, except in so far as may be allowed by the certificate, and interments in vaults in churches built in districts under local boards of health, after the passing of the Public Health Act, were prohibited: and no new burial ground in any such district was to be formed without the consent of the general board of health. The Act also enabled local boards of health to provide premises for the temporary reception of the dead previous to interment, and to arrange for the interment of the corpses of persons received therein. The provisions of the Public Health Act in respect of the burial of the dead are, however, for the most part superseded by the more general and extensive powers conferred upon local boards of health, acting as burial boards, by the Burial Acts.

11 & 12 Vict.
c. 63, s. 83.

ib. s. 83.

ib. s. 81.

If it should appear to Her Majesty in council upon the petition of the local board of health of any district, or upon the petition of any improvement commissioners elected under the powers of any local Act of parliament, stating that the district of such board or commissioners is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an order in council has been made for closing all or any of the burial

20 & 21 Vict.
c. 81, s. 4.

grounds in the district, Her Majesty by order in council may order that such local board or such commissioners shall be a burial board for the district; all the provisions of the Burial Acts are thereupon to extend to the district of such board or commissioners. But notice of the intended petition and of the time when it is to be taken into consideration by the privy council must be published in the London Gazette and in some local newspaper one month at least before the petition is to be considered. This, however, does not apply to any district consisting of the whole or part of one corporate borough.

Districts
under new
parishes
Acts.
20 & 21 Vict.
c. 81, s. 5.

Burial
grounds for
united pa-
rishes.
18 & 19 Vict.
c. 128, s. 11.

20 & 21 Vict.
c. 81, s. 1.

Burial boards may also be established for districts not separately maintaining their own poor, and which have had no separate burial grounds. ■

Where parishes have been united for ecclesiastical purposes, or where two or more parishes have heretofore had a church or burial ground for their joint use, or where the inhabitants of several parishes have been accustomed to meet in one vestry for purposes common to them all, the vestries of the majority of such parishes, whether they maintain their own poor or not, may appoint a burial board and supply vacancies therein, and exercise all other powers in relation to such boards and burial grounds as are vested in the vestries of separate parishes maintaining their own poor; and the burial boards so appointed are to have all the powers of providing burial grounds, &c. as if the several parishes had been a parish separately maintaining its own poor. In that case the expenses of the burial boards are to be borne by the several parishes, and to be apportioned among

them in proportion to the value of the property in each as rated to the relief of the poor, and be paid out of the poor rates accordingly. If, however, any of such parishes or places separately maintains its own poor or has a burial ground, a burial board is not to be appointed without the consent of the secretary of state; and if his consent be not given, the remaining parishes shall make the appointment. Burial boards may also be appointed for parishes or other districts not separately maintaining their own poor, which have hitherto had separate burial grounds, and with the like powers as if they separately maintained their own poor; and special provision is made for the payment of the expenses of the burial boards in such cases out of additional rates to be levied by the overseers upon the portion of the respective parishes within the district of the burial board.

20 & 21 Vict.
c. 81, s. 9.

18 & 19 Vict.
c. 128, s. 12.

Ib. s. 13.

The churchwardens of any parish in which no burial board has been appointed, may at any time at their discretion, without requisition of ratepayers for that purpose, convene a meeting of the vestry for the purpose of determining whether a burial ground shall be provided for the parish; and if the ratepayers shall in pursuance of public notice resolve unanimously that any new burial ground to be provided for their parish shall be held and used in like manner as the existing burial ground or churchyard of the parish, the land for such new burial ground may be conveyed and settled in accordance with such resolution, and in that case it shall not be necessary to set apart to remain unconsecrated any portion of the land so conveyed and settled; but at any time within ten years thereafter an

When new burial grounds may be conveyed and settled as old burial grounds.
18 & 19 Vict.
c. 128, s. 3.
Ib. s. 10.

unconsecrated burial ground may also be provided for the parish.

General provisions.

The provisions of the Burial Board Acts, which are of general application, are now to be considered.

New burial grounds.

15 & 16 Vict.
c. 85, s. 10.

The churchwardens of any parish after an order in council has been made in the manner before mentioned, upon a requisition of ten or more ratepayers, are to convene a vestry meeting to determine whether a burial ground shall be provided;

Appointment of burial boards.
18 & 19 Vict.
c. 128, s. 3.

but by the subsequent Act the churchwardens of any parish in which no burial board has been appointed, may at any time, at their discretion, without requisition of ratepayers for that purpose, convene a meeting of the vestry for the purpose of determining whether a burial ground shall be provided for the parish; and it may here be stated that resolutions or proceedings of any vestry for the purposes of the Burial Acts are not to be held void or voidable by reason of any defect or irregularity of or in notice of such vestry or error in the form of calling the meeting, or in the proceedings thereat, unless notice of such defect or irregularity be given.

20 & 21 Vict.
c. 81, s. 27.

In case the vestry agree thereto, they are to appoint not less than three nor more than nine persons, being (with the exception of the incumbent) ratepayers of the parish, to be the burial board thereof. One-third, or as near as may be one-third, of the persons so appointed are to go out of office yearly, at such time as shall be fixed by the vestry, but are eligible for immediate re-appointment. Any member may resign his office, on giving notice in writing to the churchwardens, and vacancies may be filled up when and as the vestry shall think fit; but the subsequent Act requires that every vacancy shall be filled up by the vestry within one

15 & 16 Vict.
c. 85, s. 11.

any vacancy shall be filled up by the vestry within one

Ib. s. 12.

18 & 19 Vict.
c. 128, s. 4.

any vacancy shall be filled up by the vestry within one

month after it shall have happened. Immediately on the occurrence of a vacancy, it is to be notified by the burial board to the churchwardens; and in case the vestry neglects to fill up the vacancy, it may be filled up by the burial board, at any meeting thereof. The persons appointed to supply vacancies must be ratepayers of the parish; and the burial board may act, notwithstanding that there may be vacancies in their number.

The board may meet at such times and at such intervals as they may appoint, and extraordinary meetings may be called by any two members, on forty-eight hours' notice. Three members shall constitute a quorum of the board, who may appoint and remove at pleasure a clerk and such other officers and servants as shall be necessary, whose salaries are to be subject to the approval of the vestry. The board may also hire and rent an office for holding their meetings and transacting their business, and are to keep minutes of their proceedings, and accounts of all sums received and paid, which latter are to be open for inspection. The vestry are yearly to appoint two persons, not being members of the board, to be auditors of the accounts of the board, who are to audit the accounts in the month of March in each year. The expenses of the burial board are to be paid out of the poor rates by the overseers, upon the receipt of a certificate from the burial board of the sums required for defraying their expenses; but any expenses to be incurred in providing and laying out a burial ground, and building the necessary chapel or chapels thereon, are not to exceed such sum as the vestry shall authorize to be expended for that purpose. Where, however, the vestry refuse or neglect

Their meetings.

15 & 16 Vict. c. 85, s. 13, and 18 & 19 Vict. c. 128, s. 5.

Quorum.

15 & 16 Vict.

c. 85, s. 14.

Their officers.

Ib. s. 15.

Their offices.

Their accounts.

Ib. s. 16.

Ib. s. 17.

Auditors of accounts.

Ib. s. 18.

Expenses of burial boards.

Ib. s. 19.

18 & 19 Vict.

c. 128, s. 6.

to authorize the expenditure which the burial board shall have declared to be necessary, on a representation to the secretary of state, he may, by warrant, authorize the burial board, without further sanction or approval of the vestry, to expend such sums, borrow such sums of money, enter into such contracts and purchases, and do such other acts as might have been done with the authority of the vestry, subject to such limitations or restrictions as the secretary of state may prescribe. The board, with the sanction of the vestry and the approval of the commissioners of Her Majesty's Treasury, are empowered to borrow any money required for providing and laying out any burial ground, and building a chapel or chapels thereon, and to charge the future poor rates with the repayment thereof and interest; for the paying off the principal a sinking fund is to be provided. The public works loan commissioners may advance money for the purposes of the burial board, or the money may be raised by way of terminable annuities. The board may also at any future time borrow money at lower rates of interest, to pay off securities bearing a higher rate, and also to pay off former mortgages. The money so raised, and the income derived from the burial ground, except the fees payable to the incumbent, clerk, and sexton of the parish, are to be applied towards defraying the expenses of the board; and if there should be any overplus, it is to be applied in aid of the poor rates. The vestries of two or more parishes may concur in providing one burial ground for the common use of such parishes as they shall mutually agree; but at any time before a burial ground has been provided, the vestries may determine the union

Loans.
15 & 16 Vict.
c. 85, ss. 20,
25.

20 & 21 Vict.
c. 81, s. 20.

15 & 16 Vict.
c. 85, s. 21.
20 & 21 Vict.
c. 81, s. 21.

17 & 18 Vict.
c. 87, s. 4.
Ib. s. 5.

Application
of funds.
15 & 16 Vict.
c. 85, s. 22.

Joint burial
grounds.
Ib. s. 23.

20 & 21 Vict.
c. 81, s. 2.

between them. If the union be not determined the burial boards of the respective parishes are then to act as one joint burial board for the whole of the parishes, and all acts authorized to be done by such burial board, are to be done with the approval, sanction, or authority of the vestry, or where the board is constituted of more than two parishes, with the approval of the vestries of the majority of such parishes.

The burial board of every parish is to be a body corporate by the name of "The Burial Board for the parish of —, in the county of —;" and in the case of a joint burial board, by the name of "The Burial Board for the parishes of — and —, in the county of —," and by that name are to have perpetual succession and a common seal, and to sue and be sued. After being constituted, the burial board, with all convenient speed, are to proceed to provide a burial ground, of convenient access, for the parish or parishes for which they are appointed to act, and to make arrangements for facilitating interments therein; or if they see fit they may, with the approval of the secretary of state, provide more than one burial ground; or they may provide distinct burial grounds, to be used as consecrated and unconsecrated burial grounds; the burial grounds so provided may be within or without the parish, and the assessment to local rates upon the land shall not be increased after it is purchased for a burial ground. No portion of the burial ground must, however, be nearer than one hundred yards to any dwelling-house, without the consent, in writing, of the owner, lessee, and occupier of such dwelling-house; and in all cases in which a new burial ground is provided, it shall be divided into conse-

30 & 31 Vict.
c. 81, s. 1.

Incorporation of burial boards.
15 & 16 Vict.
c. 85, s. 24.

When burial ground to be provided.
Ib. s. 25.

30 & 31 Vict.
c. 81, s. 3.

15 & 16 Vict.
c. 85, s. 25.

18 & 19 Vict.
c. 123, s. 15.

17 & 18 Vict.
c. 87, s. 12.
18 & 19 Vict.
c. 123, s. 9.

16 & 17 Vict.
c. 124, s. 7.

crated and unconsecrated parts in such proportion; and the unconsecrated part shall be allotted in such manner and in such portions as may be sanctioned by the secretary of state. The burial board may also have transferred to them burial grounds which have been provided for any parish under the Church Building Acts.

The board, with the approval of the vestry, may contract for the purchase of any lands for the purposes of a burial ground, or for the purchase of any cemetery already existing, or for the right of interment therein; for that purpose certain provisions of the Lands Clauses Consolidated Act, 1845, are incorporated; and the board, with the approval of the vestry, may sell lands not wanted for the purposes of burial. They may also, with the like approval and the approval of the guardians of the poor of the parish and the Poor Law Board, appropriate for the purposes of a burial ground any land belonging to the parish; after the ground has been provided it is to be laid out and embellished by the board, in such manner as may be fit and proper, and a chapel is to be built for the performance of the burial service according to the rites of the established church; but any land which is unconsecrated, and which has not been used, and which is not immediately required for the purposes of the burial ground, may be let by the burial board, with the sanction of the secretary of state, with a power to re-enter upon six months' notice. The burial board may contract for the necessary works to be done, and when the ground is in a proper condition for the purpose, it is to be consecrated by the bishop of the diocese; but a portion of it is to be set apart

20 & 21 Vict.
c. 81, s. 7.

Contracts for
purchase of
land.

15 & 16 Vict.
c. 85, s. 26.

Lands
Clauses Act.
Ib. s. 27.

Sale of land
not required.
Ib. s. 28.

Parish lands.
Ib. s. 29.

Laying out
ground.

Ib. s. 30 and
16 & 17 Vict.
c. 134, s. 7.

Chapel.

15 & 16 Vict.
c. 85, s. 30.

18 & 19 Vict.
c. 128, s. 17.

Contracts for
works.

15 & 16 Vict.
c. 85, s. 31.

Consecration

Ib. s. 30.

unconsecrated, upon which a suitable chapel is to be built for the performance of the burial service. It is not necessary to erect or maintain any wall or fence between the consecrated and the unconsecrated portions of the burial ground; but if there be no such wall or fence, the burial board is to repair and renew such boundary marks of stone or iron as may be sufficient to show the boundaries of each portion of the ground. There is no obligation to build a chapel for persons not members of the established church when the secretary of state, upon a representation of three-fourths of the vestry, declares such to be unnecessary; and where separate burial boards have burial grounds adjoining each other, the same chapels may be used for burials in each. If the bishop shall for any cause refuse to consecrate the ground after it is declared to be in a fit and proper condition for the purpose of interment, an appeal may be made to the archbishop of the province, who may, in certain cases, license the ground for the interment of bodies according to the rites of the Established Church; moreover, if the secretary of state shall have certified with respect to any burial ground that the necessary provisions have been complied with, the incumbents of the parishes for which it is provided, or their curates, or other ministers, if they think fit, may lawfully bury in such burial ground, prior to the decision of the bishop or archbishop upon the consecration thereof. After consecration the burial ground is to be the burial ground of the parish or parishes for which it is provided. The parishioners and inhabitants of the parish are to have the same rights of sepulture in it as they would have had in the burial ground in

Part not to be consecrated.

Ib.
30 & 31 Vict.
c. 81, s. 11.

18 & 19 Vict.
c. 128, s. 14.

Ib. s. 16.

20 & 21 Vict.
c. 81, s. 12.

Ib. s. 13.

To be burial ground of parish.

15 & 16 Vict.
c. 85, s. 33.

Rights of sepulture,
Ib.

Duty of incumbents, &c., as to burial. Ib.	and for their parish. The incumbent or minister by himself and his curate, or other duly qualified person, is to perform the duties and to have the same rights and authorities for the performance of religious service in the burial of the remains of parishioners or inhabitants of the parish, and shall be entitled to receive the same fees in respect of such burials which he has previously enjoyed and received; and so also with regard to the clerk and sexton of the parish: and the provision in the 52 Geo. 3, c. 146, s. 4, with regard to the transmission to the incumbent of the parish of a certificate of burial, when the burial service is performed by some other than the incumbent thereof, shall not apply to burial grounds provided under the Burial Acts.
Their fees. Ib.	
Clerk and sexton. Ib.	
20 & 21 Vict. c. 81, s. 16.	
Fees, division of between incumbents. 15 & 16 Vict. c. 85, s. 35.	When the fees for burials in the particular parish are divided between the incumbent of the parish and the incumbent of any district parish, each incumbent is to have the same proportion of fees for burials in the burial ground as he was before entitled to receive. Fees heretofore payable to churchwardens for any parochial purpose will continue to be paid to them by the burial board in respect of interments in the burial ground; and where under any local Act fees on interments are payable to the churchwardens or to any trustees for the purpose of enabling them to pay an annuity or stipend to the incumbent, the fees are to continue to be so paid, and the incumbent is to be entitled to the surplus, if any should remain after payment of his stipend. The fees payable to incumbents, clerks, sextons and other persons may, with the consent of the bishop, be revised from time to time, or annual sums may be fixed in lieu thereof.
How when payable to churchwardens. Ib. s. 36. Ib. s. 50.	
Revision of fees. Ib. s. 37.	

The burial board may sell the exclusive right of burial, either in perpetuity or for a limited period, in any part of the burial ground, and the right of constructing vaults therein, with the same rights as to burial, &c., subject to the claim of the incumbent or minister of the parish to such fees as shall be settled by the vestry with the approval of the bishop of the diocese; and authority is given to the board to fix the payments to be made for interments in the ground, and for exclusive right of burial, for the construction of vaults and right to erect monuments; but those payments shall be so fixed and settled subject to the approval of the secretary of state, and shall not be altered without his approval; and no fees shall be charged or received by any burial board in respect of burials, &c., in the unconsecrated portion of the burial ground but such as are identical in amount with the fees charged and received in respect of burials, &c., in the consecrated portion thereof, less the portion of such corresponding fees or payments which may be received for or on account of any incumbent, churchwarden, clerk or sexton.

The management, regulation and control of the burial grounds is vested in and is to be exercised by the burial boards; but any question which may arise touching the fitness of any inscription upon a monument in consecrated ground is to be determined by the bishop of the diocese; who is also to confirm any arrangements which may be made by a majority or one-half of the incumbents interested in the question of the burial service. For the protection of the burial ground the "Cemetery Clauses Act, 1847," is incorporated. Burial boards are empowered to make such arrangements as they may think fit for

Sale of exclusive rights of burial.
15 & 16 Vict.
c. 85, s. 33.
Vaults.
Ib.

Payments in respect thereof.
Ib. s. 34.

18 & 19 Vict.
c. 128, s. 7.

20 & 21 Vict.
c. 81, s. 17.

Management of burial ground.
15 & 16 Vict.
c. 85, s. 38.

Burial service.
Ib. s. 30.

Protection of burial ground.
Ib. s. 40.

Conveyance of bodies for interment.
Ib. s. 41.

Reception
houses.
Ib. s. 42.

Regulations
of secretary
of state.
Ib. s. 44.

Of Queen in
council.
20 & 21 Vict.
c. 81, s. 10.

Inspection of
burial
grounds.
18 & 19 Vict.
c. 128, s. 8.

Closed bu-
rial grounds.
Ib. s. 18.

20 & 21 Vict.
c. 81, s. 8.

facilitating the conveyance of bodies to burial grounds, and they may also, with the approval of the vestry, provide houses for the reception of dead bodies until interment.

The secretary of state may make such regulations as to him may seem proper in relation to burial grounds and places for the reception of bodies previous to interment, the protection of public health, and the maintenance of public decency. The Queen in council may also make regulations for the protection of public health, and for the maintenance of public decency in respect of all burials in common graves in any cemetery established under the authority of any local Act of Parliament; and the secretary of state may also appoint and authorize any person to inspect any burial ground or cemetery, parochial or non parochial, or place for the reception of dead bodies, to ascertain the state and condition thereof, and whether the regulations have been observed and complied with.

Churchyards or burial grounds in which burials have been discontinued by orders in council are to be maintained by the burial board or the churchwardens, as the case may be, in decent order, who are to do the necessary repairs of the walls and other fences thereof, the costs and expenses of which is to be repaid by the overseers of the parish upon the certificate of the burial board out of the poor rate, unless there shall be some other fund chargeable with such costs and expenses. Closed burial grounds which do not belong to the parish may be purchased by the vestry of the parish, and from thenceforward they are to be subject to all the conditions affecting the burial grounds of the parish in which they are situate.

In every burial ground registers of burials therein are to be kept, distinguishing the part of the ground where the burial took place; they are to be properly indexed, and copies or extracts therefrom are to be received in all courts as evidence of the burials entered therein. Transcripts of these are also to be sent to the registrar of the diocese for preservation, and searches made be made in them subject to the regulations in the 6 & 7 W. 4, c. 86. Persons wilfully destroying or falsifying them or counterfeiting the seal of the burial board are to be deemed guilty of felony.

Registers of
burials.
16 & 17 Vict.
c. 134, s. 8.

20 & 21 Vict.
c. 81, s. 15.

If any person after the time mentioned in an order of council for the discontinuance of burials shall knowingly and wilfully bury any body or otherwise assist therein within the limits in which burials have been ordered to be discontinued, he shall forfeit a sum not exceeding £10; or if any person having the care of any burial ground or cemetery, parochial or non parochial, shall obstruct any person authorized by the secretary of state to inspect the same, or shall violate, or neglect, or fail to observe and comply with any regulation of the secretary of state, or any regulation imposed by the Act, he shall, on summary conviction, forfeit a sum not exceeding £10; or if any person shall violate or wilfully neglect to observe any regulations of the Queen in council for the protection of public health, and for the maintenance of public decency, in respect of burials in common graves in any of the metropolitan cemeteries belonging to public companies, or in any cemetery established under the authority of any local Act of Parliament, he shall on conviction forfeit and pay any sum not exceeding £10.

Penalties.
18 & 19 Vict.
c. 128, s. 2.

Id. s. 8.

20 & 21 Vict.
c. 81, s. 10.

The Act 20 & 21 Vict. c. 81, contains a clause

Pauper burial
grounds.

Burial of
paupers.

Place of
burial.

(s. 6) which is quite foreign to the general subject of the Burial Acts and ought to have been provided for, if at all, in some Act amending the poor laws. It is enacted by the section referred to that where the guardians of any parish or union become possessed of any land suitable to the purposes of a burial ground, and the Poor Law Board shall consent to such land being appropriated to the reception of the dead bodies of any poor persons, whom such guardians shall be authorized "or required by law" to bury, the ordinary of the diocese, if he see fit, may consecrate the whole or part of such land, and after consecration the guardians may lawfully direct any such dead body to be buried therein; but not if such person during his or her life time or his or her relatives shall have desired the burial to take place elsewhere. This limitation as to the place of burial is in accordance with the 7 & 8 Vict. c. 101, s. 31, which is the first statutory provision enabling the local authorities to bury the bodies of poor persons at the cost of the poor rates. It is thereby enacted, "that it shall be lawful for guardians, or where there are no guardians for the overseers, to bury the body of any poor person which may be within their parish or union respectively, and to charge the expense thereof to any parish under their control to which such person may have been chargeable, or in which he may have died, or otherwise in which such body may be; and unless the guardians, in compliance with the desire expressed by such person in his lifetime, or by any of his relations, or for any other cause, direct the body of such poor person to be buried in the churchyard or burial ground of the parish to which such person

has been chargeable (which they are hereby authorized to do), every dead body which the guardians, or any of their officers duly authorized, shall direct to be buried at the expense of the poor rates, shall (unless the deceased person or the husband or wife or next of kin of such deceased person have otherwise desired) be buried in the churchyard or other consecrated burial ground in or belonging to the parish, division of parish, chapelry, or place in which the death may have occurred; and in all cases of burial under the direction of the guardians or overseers as aforesaid, the fee or fees payable by the custom of the place in which the burial may take place, or under the provisions of any Act of parliament, shall be paid out of the poor rates, for the burial of each such body, to the person or persons who by such custom or under such Act may be entitled to receive any fee.”

*Customary
fees to be
paid.*

The 3 Geo. 4, c. 126, s. 32, with regard to the exemption of funerals from tolls, is extended to funerals in burial grounds provided by the parish or place in which the person died, although such burial ground be not within the limits of the parish or place for which it may have been provided, or in which the turnpike road may lie.

*Exemption
from tolls.
20 & 21 Vict.
c. 81, s. 14.*

Finally the Queen in council may order certain things to be done by or under the directions of the churchwardens or other persons having the care of vaults or places of burial, for preventing them becoming or continuing dangerous or injurious to public health. Trustees of closed cemeteries, with the sanction of the secretary of state, may let, lease or sell portions thereof in which burials may not have taken place. Except in cases where a body is

*Vaults, &c.
dangerous
to health.
Ib. s. 23.*

*Sale of por-
tions of
closed ceme-
teries.
Ib. s. 24.*

Removal
of bodies
from burial
ground.
Ib. s. 25.

Closed
cemeteries,
purchase of
by burial
boards.
Ib. s. 26.

Extra paro-
chial places.

removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose, bodies are not to be removed from burial grounds, without licence under the hand of the secretary of state; and burial boards may purchase cemeteries which have been closed by order in council, when they adjoin or are near to any land appropriated or about to be appropriated for the purposes of a burial ground, and are eligible as sites for buildings, or for making approaches to the new burial ground.

It remains further to notice the 20 Vict. c. 19, relating to extra-parochial places, which enacts that after the 31st December, 1857, every place entered separately in the report of the registrar-general on the last census, which is reported to be extra-parochial, and wherein no rate is levied for the relief of the poor, shall for all the purposes of assessment to the poor rate, and amongst other matters, the burial of the dead, and the registration of births and deaths, be deemed a parish for such purposes, and shall be designated by the name assigned to it in such report.

THE INCORPORATED

BURIAL BOARD ACTS

RELATING TO THE

BURIAL OF THE DEAD.

. The sections and the schedules to which an asterisk is prefixed have exclusive application to the metropolis. The other sections are of general application. See 16 & 17 Vict. c. 134, ss. 7, 8 & 9.

15 & 16 VICT. CAP. 85.

An Act to amend the Laws concerning the Burial of the Dead in the Metropolis. [1st July, 1852.]

WHEREAS it is expedient to repeal "The Metropolitan Interments Act, 1850," and to make such other provision as herein-after mentioned in relation to interments in and near the metropolis: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :

* I. The said Act shall be repealed : Provided always, that it shall be lawful for Her Majesty to continue during the continuance of the General Board of Health the appointment of the additional member of such board authorized by the said Act, and the salary of such member, fixed as in the said Act mentioned, shall be paid as by section seven of

13 & 14 Vict.
c. 52, re-
pealed, and
Her Majesty
may con-
tinue addi-
tional mem-
ber of board
therein
authorized.

the Public Health Act, 1848, is directed concerning the salaries therein mentioned.

The 17 & 18 Vict. c. 95 (s. 1), repealed the proviso to this section, and provided for the reconstruction of the General Board of Health.

On representation of secretary of state, Her Majesty in council may order discontinuance of burials in any part of the metropolis.

* II. In case it appear to Her Majesty in council, upon the representation of one of Her Majesty's principal secretaries of state, that for the protection of the public health burials in any part or parts of the metropolis, or in any burial grounds or places of burial in the metropolis, should be wholly discontinued, or should be discontinued subject to any exception or qualification, it shall be lawful for Her Majesty, by and with the advice of her privy council, to order that, after a time mentioned in the order, burials in such part or parts of the metropolis or in such burial grounds or places of burial shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such order, and so from time to time as circumstances may require; provided that notice of such representation, and of the time when it shall please Her Majesty to order the same to be taken into consideration by the privy council, shall be published in the *London Gazette*, and shall be affixed on the doors of the churches or chapels of the parishes in which any burial grounds or places of burial affected by such representation shall be situate, or on some other conspicuous places within the part or parts of the metropolis affected by such representation, one calendar month, or where any order made under "The Nuisances Removal and Diseases Prevention Act, 1848," directing the provisions of that Act for the prevention of epidemic, endemic, and contagious diseases to be put in force, is in force within such part or parts, then seven days at the least before such representation is so considered: provided always, that no such representa-

tion shall be made in relation to the burial ground of any parish until ten days previous notice of the intention to make such representation shall have been given to the incumbent and the vestry clerk of such parish.

The Nuisances Removal and Diseases Prevention Act, 1848, has been repealed by the 18 & 19 Vict. c. 121, and other provisions made by the 18 & 19 Vict. c. 116, for the better prevention of diseases. It seems to be somewhat dubious what officer is referred to under the denomination of "vestry clerk" in this section. In parishes in Schedule A. of the Metropolis Local Management Act (18 & 19 Vict. c. 120) the vestry clerk will be the clerk of the vestries elected under the provisions of that Act: but in the parishes named in Schedule B. only those of them which have a population exceeding 2,000 persons can elect vestry clerks under the 13 & 14 Vict. c. 57.

As regards the postponement or variation of orders in council made under this Act, see 18 & 19 Vict. c. 128, s. 1.

As bearing upon the right to private graves in burying grounds which have been closed, the case of *Moreland v. Richardson* (25 L. J. R. n. s., Ch. 883; 26 ib. 690), may be cited. Divers persons purchased private graves and vaults in the burial ground attached to a dissenters chapel, and the receipt for the money stated that the purchase was made in perpetuity. Upon an interference with the graves and a mutilation and removal of the tombstones by persons claiming to be mortgagees, and claiming also a right to remove the entire burial ground and to convert it to building purposes, it was held upon an application by five purchasers of private graves and vaults, that they were entitled to an injunction to restrain any interference with their own particular graves and tombstones; and as no further relief was asked with respect to other parts of the ground in which interments had taken place, except in general terms, no further injunction could be granted to restrain the defendants from using such other parts of the burial ground as they thought fit.

* III. No such order in council as aforesaid shall be deemed to extend to any burial ground of the people called Quakers, or of the persons of the Jewish persuasion, used solely for the burial of the bodies of such people and persons respectively, unless the same be expressly mentioned in such order; and nothing in this Act shall prevent the burial in any

Order not to extend to burial grounds of Quakers or Jews, unless expressly included.

such burial ground in which for the time being interment is not required to be discontinued of the bodies of such people and persons respectively; and no such order in council as aforesaid shall be deemed to extend to any non-parochial burial ground being the property of any private person, unless the same be expressly mentioned in such order.

Burial not to take place after order in council for discontinuance.

* IV. It shall not be lawful, after the time mentioned in any such order in council for the discontinuance of burials, to bury the dead in any church, chapel, churchyard, or burial place, or elsewhere, within the part or parts of the metropolis or in the burial grounds or places of burial (as the case may be) in which burials have by any such order been ordered to be discontinued, except as in this Act or in such order excepted; and every person who shall, after such time as aforesaid, bury any body, or in anywise assist in the burial of any body, contrary to this enactment, shall be guilty of a misdemeanor.

Restriction as to place of burial of inhabitants of parishes the burial grounds whereof are closed.

* V. After the time from which burials in any place of burial of any parish are required under this Act to be discontinued, the body of any parishioner or inhabitant of such parish shall not be buried in any burial ground within the metropolis belonging to any other parish within the metropolis, save where the body of any of the family or relatives of such parishioner or inhabitant has been interred in such burial ground, and the relatives or other persons having the care and direction of the funeral signify a desire that on that account the body of such parishioner or inhabitant should be there interred (such burial ground not being a burial ground in which burials have been ordered to be discontinued under this Act), and save as herein otherwise provided; and every person having the care or control of any burial ground who knowingly authorizes or

permits any burial therein contrary to this enactment shall be guilty of a misdemeanor.

* VI. Provided always, that notwithstanding any such order in council, where by virtue of any faculty legally granted, or by usage or otherwise, there is at the time of the passing of this Act any right of interment in or under any church or chapel affected by such order, or in any vault of any such church or chapel, or of any churchyard or burial ground affected by such order, and where any exclusive right of interment in any such burial ground has been purchased or acquired before the passing of this Act, it shall be lawful for one of Her Majesty's principal secretaries of state from time to time, on application being made to him, and on being satisfied that the exercise of such right will not be injurious to health, to grant licence for the exercise of such right during such time and subject to such conditions and restrictions as such secretary of state may think fit, but such licence shall not prejudice or in anywise affect the authority of the ordinary, or of any other person who, if this Act had not been passed, might have prohibited or controlled interment under such right, nor dispense with any consent which would have been required, nor otherwise give to such right any greater force or effect than the same would have had if this Act had not been passed.

Saving of certain rights to bury in vaults, &c.

See 20 & 21 Vict. c. 81, s. 23, with respect to the precautions which by an order in council may be directed to be taken in order to prevent vaults, &c. being dangerous to health.

* VII. The provisions of this Act shall not extend to authorize the discontinuance of burials or to prevent the burial of the body of any person in any of the cemeteries mentioned in the schedule (B.) to this Act, or in any burial ground or cemetery to be hereafter provided with the approval of one of

Saving as to cemeteries in schedule (B). and new burial grounds hereafter approved of by secretary of state.

Her Majesty's principal secretaries of state, as herein mentioned.

See 20 & 21 Vict. c. 85, s. 10, as to the regulation of burials in common graves in these cemeteries by order in council.

Saving as to St. Paul's cathedral and Westminster abbey.

* VIII. Nothing in this Act contained shall extend to prevent the interment in the cathedral church of Saint Paul's, London, or in the collegiate church of Saint Peter's, Westminster, of the body of any person, where Her Majesty, by any writing under her royal sign manual, shall signify her pleasure that the body be so interred.

New burial grounds in the metropolis to be approved by secretary of state.

* IX. No new burial ground or cemetery (parochial or non-parochial) shall be provided and used in the metropolis, or within two miles of any part thereof, without the previous approval of one of Her Majesty's principal secretaries of state.

Churchwardens, after order, or at any time upon requisition of ten ratepayers, to convene vestry meeting to determine whether a burial ground shall be provided.

X. Upon the requisition in writing of ten or more ratepayers of any parish in the metropolis in which the place or places of burial shall appear to such ratepayers insufficient or dangerous to health (and whether any order in council in relation to any burial ground in such parish has or has not been made), the churchwardens or other persons to whom it belongs to convene meetings of the vestry of such parish shall convene a meeting of the vestry, for the special purpose of determining whether a burial ground shall be provided under this Act for the parish; and public notice of such vestry meeting, and the place and hour of holding the same, and the special purpose thereof, shall be given in the usual manner in which notices of the meetings of the vestry are given, at least seven days before holding such vestry meeting; and if it be resolved by the vestry that a burial ground shall be provided under this Act for the parish, a copy of such resolution, extracted from the minutes of the vestry, and signed

by the chairman, shall be sent to one of Her Majesty's principal secretaries of state.

With regard to vestry meetings for the purposes of any of these Acts, see the 20 & 21 Vict. c. 81, s. 27, which enacts that resolutions passed thereat shall not be void by reason of any defect or irregularity or error of notices, unless notice in writing of the defect, irregularity or error shall have been given at such vestry or within seven days thereafter to the churchwardens or other persons whose office it is to call vestry meetings. The provision in this section as to the requisition of ten or more ratepayers is dispensed with by the 18 & 19 Vict. c. 128, s. 3, which enables the churchwardens or other persons without requisition to convene a meeting of the vestry for the purpose of determining whether a burial ground shall be provided for the parish.

In the case of a district established under a local board of health, or of any place under local improvement commissioners, no meeting of vestry is necessary previous to the establishment of a burial board. In such case the local board of health or such commissioners may by order in council be constituted the burial board of the district or place. See 20 & 21 Vict. c. 81, s. 4.

As regards the establishment of burial boards for parishes wholly or partly within boroughs, see 17 & 18 Vict. c. 87, s. 1.

Section 52 interprets the term "vestry" as meaning the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry or other vestry under the 59 Geo. 3, c. 12, or under the 2 Will. 4, c. 60, or under any local Act of Parliament, in which case it is to mean such select or other vestry. The intention of the Act was that the members of the burial board, who are to tax the ratepayers, should be chosen by those who are to pay the expenses to be incurred, and therefore the Act gives the right to elect to the inhabitants at large, except in those cases in which there is a select vestry for the management of the affairs of the parish. The body electing must be the real governing body of the parish; therefore where in Sunderland a local Act provided for twenty-four vestrymen being chosen for the purpose of managing the affairs of the church, providing scavengers, &c. which vestry had always acted in all the affairs of the parish, it was held that this vestry was the proper body to determine whether a burial ground should be provided for the parish (*In re Sunderland*, 25 L. J. R. n. s., Q. B. 271. *R. v. Peters*, 6 Ell. & Bl. 225). The select vestry must not be one in name only, and it must be not a body entrusted with other functions than the general management of the parish. Therefore, where, under a local Act for the administration of the poor laws in Liverpool, a

select vestry was elected for carrying into execution the provisions of the Act, to be a board of guardians and to have the same duties as guardians of the poor, on *quo warranto* against the members of a burial board elected at a meeting of the general vestry of the parish, it was held that the select vestry was not "a vestry elected under the provisions of a local Act for the government of the parish," within the meaning of s. 52 of the 15 & 16 Vict. c. 85, and therefore, that the right to elect the burial board was in the general vestry (*Ex parte Urquhart, in re the Burial Board of Liverpool*, 3 Jur. n. s. 441; 26 L. J. R. n. s., Q. B. 213).

In case vestry agree to provide a burial ground, board to be appointed.

XI. In case of such resolution as aforesaid the vestry shall appoint not less than three nor more than nine persons, being ratepayers of the parish, to be the burial board of such parish, of whom one-third, or as nearly as may be one-third (to be determined among themselves), shall go out of office yearly at such time as shall be from time to time fixed by the vestry, but shall be eligible for immediate re-appointment: Provided always, that the incumbent of the parish shall be eligible to be appointed and re-appointed from time to time as one of the members of the said board, although not a ratepayer of the parish; provided also, that any member of the board may at any time resign his office, on giving notice in writing to the churchwardens or persons to whom it belongs to convene meetings of the vestry.

Resignation of members.

See 20 & 21 Vict. c. 81, s. 4, as to the establishment of burial boards for districts under local boards of health and local improvement commissioners.

Vacancies to be filled up by vestry.

XII. Any vacancies in the board may be filled up by the vestry when and as the vestry shall think fit.

The 18 & 19 Vict. c. 128, s. 4, requires that every vacancy in any burial board shall be filled up by a vestry within one month after the vacancy shall have happened, and that notice of the vacancy shall be immediately notified to the churchwardens in order that they may convene a vestry meeting to elect another member. That Act also provides that the board may act for any purpose, notwithstanding any vacancies therein.

XIII. The board shall meet at least once in every month at their office, or some other convenient place previously publicly notified, and the said board may meet at such other time as at any previous meeting shall be determined upon; and it shall be at all times competent for any two members of the board, by writing under their hands, to summon, with at least forty-eight hours notice, the board for any special purpose mentioned in such writing, and to meet at such time as shall be appointed therein.

Meetings of the board.

The provision in this section, as to the burial board meeting once in every month, is repealed by the 18 & 19 Vict. c. 128, s. 5; consequently the meetings may be held at such intervals as the board may appoint.

XIV. At all meetings of the board any number not less than three members of such board shall be a sufficient number for transacting business, and for exercising all the powers of the board.

Quorum of meetings of the board.

XV. The board shall appoint, and may remove at pleasure, a clerk and such other officers and servants as shall be necessary for the business of the board and for the purposes of their burial-ground, and, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants, and, when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business.

Board may appoint and remove officers, &c.

XVI. Entries of all proceedings of the board, with the names of the members who attend each meeting, shall be made in books to be provided and kept for that purpose, under the direction of the board, and shall be signed by the members present or any two of them; and all entries purporting to be so signed shall be received as evidence, without proof of any meeting of the board having been duly convened or held, or of the presence at any such

Minutes of proceedings of board to be entered in a book.

Board to
keep ac-
counts, which
shall be open
to inspection.

meeting of the persons named in any such entry as being present thereat, or of such persons being members of the board, or of the signature of any person by whom any such entry purports to be signed, all which matters shall be presumed until the contrary be proved; and the board shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money are paid and such liabilities incurred.

Penalty for
refusing to
allow inspection.

XVII. All such books shall at all reasonable times be open to the examination of every member of such board, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books, or any part thereof, without paying for the same; and in case the members of such board, or any of them, or any of the officers or servants of such board having the custody of the said books, being thereunto reasonably requested, refuse to permit or do not permit any churchwarden, overseer, or ratepayer to examine the same, or take any such copies or extracts, every such member, officer, or servant so offending shall for every such offence, upon a summary conviction thereof before any justice of the peace, forfeit any sum not exceeding five pounds.

Auditors to
be appointed
yearly who
shall examine
the accounts, and
report to
vestries.

XVIII. The vestry shall yearly appoint two persons, not being members of the board, to be auditors of the accounts of the board, and at such time in the month of March in every year as the vestry shall appoint, the board shall produce to the auditors their accounts, with sufficient vouchers for all monies received and paid, and the auditors shall

examine such accounts and vouchers, and report thereon to the vestry.

This is the only provision which is made by the Acts for auditing the accounts of the burial boards. It is quite inadequate for the real purposes of an audit; for it gives the auditors no power to control illegal or unnecessary expenditure on the part of the burial board or their officers. It only extends to an arithmetical examination of the accounts, and to the production of proper vouchers for the several items. The auditors may allow any item for which credit is claimed, but they cannot disallow any illegal payment; neither can they surcharge any person with money not brought into account. They may report to the vestry,—and that is all.

XIX. The expenses incurred or to be incurred by the burial board of any parish in carrying this Act into execution shall be chargeable upon and paid out of the rates for the relief of the poor of such parish, the expenses to be so incurred for or on account of any parish in providing and laying out a burial-ground under this Act and building the necessary chapel or chapels thereon not to exceed such sum as the vestry shall authorize to be expended for such purpose; and the overseers or other officers authorized to make and levy rates for the relief of the poor in any parish shall, upon receipt of a certificate under the hands of such number of members of the burial board as are authorized to exercise the powers of the board of the sums required from time to time for defraying any such expenses as aforesaid, pay such sums out of the rates for the relief of the poor as the board shall direct.

Expenses to be paid out of the poor's rate.

This section provides for two descriptions of expenses;—those incurred in carrying the Act into execution, and expenses to be incurred in providing and laying out a burial-ground, and building the necessary chapel or chapels thereon. It is only with regard to the latter expenses that the authorization of the vestry is required, the other expenses of the burial board are subject to no control on the part of the vestry. Therefore, when the burial board shall have made, under the latter part of the section, a certificate of the sums which they require to be provided for defraying their expenses, the overseers on the receipt thereof will be bound to pay the amount called for out

of the poor-rates. So far as they are concerned the authority of the certificate is all that they require for the payment by them of the sum named in it, for they are not accountable for the subsequent application of the money by the burial board. If the overseers, on receiving the certificate of the burial board, refuse to make the payment, the remedy will then be by *mandamus*.

When a burial board is established for parishes wholly or partly within any borough, the expenses are to be paid out of the borough fund or borough rates (see 17 & 18 Vict. c. 87, s. 3).

See 18 & 19 Vict. c. 128, s. 6, as to the refusal or neglect of the vestry to authorize the expenditure of such sums as the burial board shall declare to be necessary for providing and laying out a burial-ground, &c.

With reference to this section it may be further observed that the churchwardens of a parish cannot make a rate for providing necessary additional burial ground for a parish, for that can only be done, if at all, under the Church Building Acts, 58 Geo. 3, c. 45, and 59 Geo. 3, c. 134 (*R. v. Abney, JJ. of Leicestershire*, 3 Ell. & Bl. 779; 23 L. J. R., n. s., M. C. 154).

Power to
borrow
money with
sanction of
vestry, and
approval of
the treasury.

XX. Provided always, that it shall be lawful for the board, with the sanction of the vestry and the approval of the commissioners of Her Majesty's treasury, to borrow any money required for providing and laying out any burial ground under this Act, and building a chapel or chapels thereon, or any of such purposes, and to charge the future poor rates of the parish with the payment of such money and interest thereon; provided that there shall be paid in every year, in addition to the interest of the money borrowed and unpaid, not less than one-twentieth of the principal sum borrowed, until the whole is discharged.

The proviso to this section has been repealed by the 20 & 21 Vict. c. 81, s. 18, and further provision made by ss. 20, 21 of that Act.

The 17 & 18 Vict. c. 87, s. 4, empowers the burial board to borrow money at lower rates of interest, and to pay off securities bearing a higher rate; s. 5 of the same Act enables the board to borrow money upon mortgage to pay off former mortgages as they become payable.

The 18 & 19 Vict. c. 128, s. 6, dispenses with the sanction of the vestry in certain cases.

XXI. The commissioners for carrying into execution an Act of the session holden in the fourteenth and fifteenth years of Her Majesty, chapter twenty-three, "to authorize for a further period the advance of money out of the consolidated fund to a limited amount for carrying on public works and fisheries and employment of the poor," and any Act or Acts amending or continuing the same, may from time to time make to the burial board of any parish for the purposes of this Act any loan under the provisions of the recited Act, or the several Acts therein recited or referred to, upon security of the rates for the relief of the poor of the parish.

The public works loan commissioners may advance money for the purposes of this Act.

XXII. The money raised for defraying such expenses, and the income arising from the burial ground provided for the parish, except fees payable to the incumbent, clerk, and sexton of the parish, and the other fees herein directed to be otherwise paid, shall be applied by the board in or towards defraying the expenses of such board under this Act; and whenever, after repayment of all monies borrowed for the purposes of this Act in or for any parish, and the interest thereof, and after satisfying all the liabilities of the board with reference to the execution of this Act in or for the parish, and providing such a balance as shall be deemed by the board sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus money at the disposal of the board, they shall pay the same to the overseers, in aid of the rate for the relief of the poor of the parish.

Monies raised, and the income arising from burial ground to be applied towards defraying expenses.

XXIII. The vestries of any parishes which shall have respectively resolved to provide burial grounds under this Act may concur in providing one burial ground for the common use of such parishes, in such manner, not inconsistent with the provisions

Vestries of parishes may concur in providing a burial ground for the common

use of such
parishes.

of this Act, as they shall mutually agree, and may agree as to the proportions in which the expenses of such burial ground shall be borne by such parishes, and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the monies to be raised for the relief of the poor of the same respective parish accordingly; and, according and subject to the terms which shall have been so agreed on, the burial boards appointed for such parishes respectively shall, for the purpose of providing and managing such one burial ground, and taking and holding land for the same, act as one joint burial board for all such parishes, and may have a joint office, clerk, and officers, and all the provisions of this Act shall apply to such joint burial board accordingly; and the accounts and vouchers of such board shall be examined and reported on by the auditors of each of such parishes; and the surplus money at the disposal as aforesaid of such board shall be paid to the overseers of such parishes respectively in the same proportions as those in which such parishes shall be liable to such expenses.

As regards the joint action of vestries, the 20 & 21 Vict. c. 81, s. 1, provides that all acts authorized to be done by any burial board with the approval of the vestry or vestries of the parish or parishes for which the board is constituted, may be done with the approval of the vestries of the majorities of such parishes. The same Act (sect. 2), also provides for the dissolution of joint burial boards. With regard to the providing of burial grounds for united parishes, see 18 & 19 Vict. c. 128, s. 11; and for places not separately maintaining their own poor and the expenses thereof, see *ib.* ss. 12, 13. With respect to the payment of fees, see ss. 49, 50, *post*; 16 & 17 Vict. c. 134, s. 7; and 20 & 21 Vict. c. 35.

Incorporation of burial
boards.

XXIV. For the more easy execution of the purposes of this Act the burial board of every parish appointed under this Act shall be a body corporate, by the name of "The Burial Board for the parish of () in the county of ()," and by that

name shall have perpetual succession and a common seal, and shall sue and be sued, and have power and authority (without any licence in mortmain) to take, purchase, and hold land for the purposes of this Act; and where the burial boards of two or more parishes act as and form one joint burial board for all such parishes for the purposes aforesaid, such joint board shall for such purposes only be a body corporate by the name of "The Burial Board for the parishes of and in the county of ," and by that name shall have perpetual succession and a common seal, and shall sue and be sued and have power and authority as aforesaid to take, purchase, and hold land for the purposes of this Act.

XXV. Every burial board shall, with all convenient speed, proceed to provide a burial ground for the parish or parishes for which they are appointed to act, and to make arrangements for facilitating interments therein; and in providing such burial ground the board shall have reference to the convenience of access thereto from the parish or parishes for which the same is provided; and any such burial ground may be provided either within or without the limits of the parish, or all or any of the parishes, for which the same is provided; [but no ground not already used as or appropriated for a cemetery shall be appropriated as a burial ground, or as an addition to a burial ground, under this Act, nearer than two hundred yards to any dwelling-house, without the consent in writing of the owner, lessee, and occupier of such dwelling-house.]

Board to provide a burial ground which may be within or without the parish.

The 18 & 19 Vict. c. 128, s. 10, enacts that a new burial ground provided for a parish under this Act, may be conveyed and settled in all respects as the existing burial ground of the parish. See also 16 & 17 Vict. c. 134, s. 7, as to consecrated and unconsecrated parts of the new burial ground; the 20 & 21 Vict. c. 81, s. 7, provides for the transfer to a burial board of a burial ground provided under the Church Building Acts. The 20 & 21 Vict. c. 81, s. 3, enables the burial

board to provide one or more burial grounds to be used as consecrated and unconsecrated burial grounds. The words in this section between brackets regarding the distance of the new cemetery from any dwelling-house, are repealed by the 18 & 19 Vict. c. 128, s. 9, which substitutes *one* hundred yards for *two* hundred yards. See also the 17 & 18 Vict. c. 87, s. 12; and 20 & 21 Vict. c. 81, s. 6, and note thereon.

Board may,
with ap-
proval of
vestry, pur-
chase land of
cemetaries.

XXVI. For the providing such burial ground it shall be lawful for the burial board, with the approval of the vestry or vestries of the parish or respective parishes, to contract for and purchase any lands for the purpose of forming a burial ground, or for making additions to any burial ground to be formed or purchased under this Act, as such board may think fit, or to purchase from any company or persons entitled thereto any cemetery or cemetaries, or part or parts thereof, subject to the rights in vaults and graves, and other subsisting rights which may have been previously granted therein: provided always, that it shall be lawful for such board, in lieu of providing any such burial ground, to contract with any such company or persons entitled as aforesaid for the interment in such cemetery or cemetaries, and either in any allotted part of such cemetery or cemetaries or otherwise, and upon such terms as the burial board may think fit, of the bodies of persons who would have had rights of interment in the burial grounds of such parish or respective parishes.

This section enables the burial board to acquire land for the purpose of extending the area of any existing burial ground, as well as for the establishment of entirely new burial grounds. By the 20 & 21 Vict. c. 81, s. 26, power is also given to burial boards to purchase cemetaries which have been closed when they adjoin or are near to any land appropriated or about to be appropriated by the board for the purposes of a burial ground, when such land is eligible for the purpose of making approaches to the new burial ground, or as a site for erecting buildings connected with the burial ground. The 18 & 19 Vict. c. 128, s. 6, dispenses with the sanction of the vestry in certain cases; and s. 17 of the same Act enables

the board to let land so acquired which may not be consecrated, and which may not be immediately required for burials. The 13 & 14 Vict. c. 101, s. 2, enables boards of guardians to contribute towards the enlargement of public burial grounds in certain cases.

XXVII. "The Lands Clauses Consolidation Act, 1845," except the provisions of that Act "with respect to the purchase and taking of lands otherwise than by agreement," "with respect to the recovery of forfeitures, penalties, and costs," "with respect to lands acquired by the promoters of the undertaking under the provisions of the 'Lands Clauses Consolidation Act, 1845,' or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof," and "with respect to the provision to be made for affording access to the special Act by all parties interested," shall be incorporated with this Act; and for the purposes of this Act the expression "the promoters of the undertaking," wherever used in the said Lands Clauses Consolidation Act, shall mean any such burial board.

Certain provisions of 8 & 9 Vict. c. 18, incorporated with this Act.

See the 8 & 9 Vict. c. 18; for the interpretation of terms, ss. 2, 3, 4; purchase of lands by agreement, ss. 6, 7, 8, 9, 10, 11, 15; application of compensation, ss. 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80; conveyances, ss. 81, 82, 83; entry on lands, ss. 84, 85, 86, 87, 88, 89, 90, 91; lands in mortgage, ss. 108, 109, 110, 111, 112, 113, 114; leases, ss. 119, 120, 121, 122.

XXVIII. It shall be lawful for any such board, with the approval of the vestry, to sell and dispose of any lands purchased by them under this Act, or any part thereof, in which no interment shall have taken place, and which it may appear to the board may be properly sold or disposed of; and for completing and carrying any such sale into effect, such board may make and execute a conveyance of the lands sold and disposed of as aforesaid unto the purchaser, or as he shall direct; and such conveyance shall be under the hands of at least two of the members of the board, and under the seal of the board;

Power to sell lands not wanted.

and the word "grant" in such conveyance shall have the same operation as by the said Lands Clauses Consolidation Act, 1845, is given to the same word in a conveyance of lands made by the promoters of the undertaking; and a receipt under the hands of two of the members of the board shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received; and the money to arise from such sale shall be applied to such of the purposes of this Act as the board shall think fit.

The subsequent Act, 20 & 21 Vict. c. 81, s. 24, enables trustees (with the sanction of the secretary of state) of closed cemeteries, established either under any local Act or otherwise, to let, lease, or sell portions thereof which have not received interments.

Burial board may, with approval of vestry, &c., appropriate land belonging to parish.

XXIX. Provided always, that any burial board under this Act, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the Poor Law Board, may from time to time appropriate for the purposes of a burial ground for such parish, either alone or jointly with any other parish or parishes, any land vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others, for the general benefit of the parish, or for any specific charity; provided always, that where any land so taken and appropriated shall be subject to any charitable use, such lands shall be taken on such conditions only as the Court of Chancery in the exercise of its jurisdiction over charitable trusts shall appoint and direct.

The approval of the Poor Law Board was intended to have been confined to lands vested in the guardians of the poor and parish officers; the language of the section, however, makes the approval necessary in the case of lands held to a charitable use, as well as to lands belonging to the guardians or parish.

In the case of a borough, any land belonging to the body corporate of the borough may be appropriated by the council of the borough for the purposes of a burial ground. See 17 & 18 Vict. c. 87, s. 11.

Care must be taken to inform the vestry correctly of the

nature of the benefit which the parish may have in any lands proposed to be taken under this section for the purposes of a burial ground, as if the approval of the vestry be taken on a misstatement of an important point, such approval is a mere nullity and must be taken over again upon a correct statement of facts. As in *re Egham Burial Board* (3 Jur. n. s. 956), in which the burial board, being duly constituted under the Burial Act, 1852, made a report to the vestry in accordance therewith, in which it was erroneously represented, while reporting the merits of two rival sites for a burial ground, that one of them being land held by the parish on certain charitable trusts, would cost the parish nothing. The vestry thereupon voted in favour of taking that land. In point of fact, however, it was land belonging to the parish, held on specific charitable trusts, for objects within the parish, and not for the general purposes of the parish. V. C. Sir Page Wood held, on petition under this section, that the report of the burial board was erroneous, and that the amount of the price was one of the terms which the court would consider and decide upon on an application under this section. But *semble*, that if the land had been held for the general purposes of the parish, no price would have been required by the court to be paid for the ground on its being taken for the purposes of a burial ground. The court will also refuse to entertain an application by a burial board, under this section, for the purchase of a piece of land for the purposes of their cemetery, where the sanction of the charity commissioners to the application had not first been obtained; in such an application, however, it is not necessary to show that those commissioners approve of the proposal, but only that the application to the court is made with their permission (*Ex parte Watford Burial Board*, 2 Jur. n. s. 1046; 20 J. P. 741).

XXX. It shall be lawful for any burial board to lay out and embellish any burial ground provided by such board in such manner as may be fitting and proper, and to build on any land to be purchased or appropriated for a burial ground under this Act, and according to a plan to be approved of by the bishop of the diocese, a chapel for the performance of the burial service according to the rites of the united church of England and Ireland; and such burial ground may be consecrated by the bishop of the diocese, when the same shall appear to him to be in a fit and proper condition, for the purposes of interment according to the rites of the united church: Provided always, that in providing any burial ground

Board may lay out burial ground, and build a chapel, for performance of burials according to rites of established church.

Ground may be set apart for building a chapel, &c.

such board shall set apart a portion thereof which shall not be so consecrated as aforesaid, and may build thereon a suitable chapel or chapels for the performance of funeral service.

See 20 & 21 Vict. c. 81, s. 11, as to the division or boundary marks between the consecrated and unconsecrated portions of burial grounds.

In the event of the bishop of the diocese refusing to consecrate a burial ground, the 20 & 21 Vict. c. 81, s. 12, enables the burial board to appeal to the archbishop of the province, who is to decide the matter in dispute; when he has communicated his decision (if it be in favour of the burial board) to the bishop of the diocese, if the bishop do not within one month consecrate the ground, the archbishop is then to license the same for the interment of bodies according to the rites of the established church. Section 13 also enables burials to take place according to the rites of the established church before the ground is consecrated, in certain cases, upon the certificate of the secretary of state. These provisions seem to do away with the sanctity of the rite of consecration; which, however, appears to be more a form than a reality, for it is often accomplished by little more than the stroke of the pen.

With reference to the latter part of this section it is enacted by the 18 & 19 Vict. c. 128, s. 14, that there shall be no obligation on the burial board to build a chapel for persons not members of the church of England, when the secretary of state shall, upon a representation of three-fourths of the vestry, declare it unnecessary. See also s. 16 of the same statute, which enables separate burial boards, whose burial grounds may adjoin, to contract with each other for the erection of chapels to be used in common for both burial grounds.

As to providing separate unconsecrated burial ground for the parish, see 20 & 21 Vict. c. 81, s. 3. See also 20 & 21 Vict. c. 81, s. 7, as to adding unconsecrated ground to be used as such, to burial grounds provided under Church Building Acts, and transferred to burial board; and also the 16 & 17 Vict. c. 134, s. 7, and 18 & 19 Vict. c. 128, s. 14.

Burial board
may con-
tract for
works to be
done.

XXXI. Any burial board may from time to time enter into any contract with any persons or companies for building any chapel or chapels as aforesaid, and inclosing, laying out, and embellishing any burial ground, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes

of this Act, which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished and done, and the penalties to be suffered in cases of non-performance; and all such contracts or true copies thereof shall be entered in books to be kept for that purpose: Provided always, that no contract above the value or sum of one hundred pounds shall be entered into by such burial board for the purposes of this Act unless previous to the making thereof fourteen days notice shall be given in one or more of the public newspapers published in the county or counties in which the parish or respective parishes shall be situated, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the burial board at a certain time and place in such notice to be mentioned, but it shall not be incumbent on the burial board to contract with the person offering the lowest price.

No contract above 100l. to be entered into without notice.

XXXII. From and after the consecration as aforesaid of any burial ground provided under this Act, (except any portion thereof intended not to be so consecrated,) or where all or any part of such burial ground, by reason of the same having been already consecrated, shall not require to be consecrated, then from and after such time as the bishop of the diocese shall appoint, such burial ground shall be deemed the burial ground of the parish for which the same is provided, and where the same is provided for two or more parishes such burial ground shall be in law as if such parishes were one parish, and as if such burial ground were the burial ground of such one parish; and every incumbent or minister of the parish or of each of the parishes (as the case may be) for which such burial ground is provided shall, by

Burial ground to be the burial ground of the parish or parishes for which it is provided.

himself and his curate, or such duly qualified persons as such incumbent or minister may authorize, perform the duties and have the same rights and authorities for the performance of religious service in the burial in such burial ground, or in the consecrated portion thereof, of the remains of parishioners or inhabitants of the parish of which he is such incumbent or minister, and shall be entitled to receive the same fees in respect of such burials which he has previously enjoyed and received; and the clerk and sexton of such parish or of each of such parishes shall (when necessary) perform and exercise the same duties and functions in respect of the burial of the remains of parishioners or inhabitants of the parish of which he is clerk or sexton in such burial ground or the consecrated portion thereof, and shall be entitled to receive the same fees on such burials, as he has previously performed and exercised and received, as if such burial ground were the burial ground of the respective parish of such incumbent or minister, clerk and sexton respectively; and the parishioners and inhabitants of such parish or of each of such parishes shall have the same rights of sepulture in such burial ground as they respectively would have had in the burial ground or burial grounds in and for their respective parish, subject nevertheless to the provisions herein contained.

The 20 & 21 Vict. c. 81, s. 16, makes it unnecessary for any minister who may perform the funeral service in the burial ground to give notice thereof to the rector, &c., of the parish in which the burial ground is situated, pursuant to the 52 Geo. 3, c. 146, s. 4.

The fees for burials in the consecrated and unconsecrated portions of the burial ground must be identical in amount. See 20 & 21 Vict. c. 81, s. 17. As regards the revision of the table of fees payable under this Act, see s. 37, *post*; and the notes to the next section, and to 20 & 21 Vict. c. 81, s. 17, as to the payment of fees to the incumbents, clerks, and sextons for burials in the consecrated portion of the burial ground. See also the Introduction, p. 5, as to enforcing payment thereof.

With regard to the keeping of registers of burials in the burial grounds so provided, see 16 & 17 Vict. c. 134, s. 8,

note thereon; and also s. 9, which in a manner incorporates s. 8 with this Act. The 17 & 18 Vict. c. 87, s. 7, also provides that burial grounds provided by burial boards in boroughs shall be deemed to be for the parishes in the borough.

The provisions in this section are, as regards the burial ground provided by the commissioners of sewers for the parishes in the city of London and the liberties thereof, repealed by the 20 & 21 Vict. c. 35, s. 3.

Reference may here be made to the 18 & 19 Vict. c. 79, s. 2, which enacts that the guardians of any union or parish, or the overseers of any parish not under a board of guardians, may from time to time enter into agreements with the proprietors of any cemetery established under the authority of parliament, or with any burial board duly constituted under the statutes in that behalf, for the burial of the dead bodies of any poor persons which such guardians or overseers may undertake to bury, or towards the burial whereof they may render assistance; and thereupon the burial of any such body, under the directions of the said guardians or their officer, or of such overseers, or with their aid respectively, in such cemetery, or in the burial ground of such burial board, (unless the deceased person, or the husband or wife or next of kin of such deceased person, have otherwise expressly desired,) shall be lawful: Provided, however, that no such agreement shall be valid unless made in such form and with such stipulations as the Poor Law Board shall approve.

XXXIII. Any burial board, under such restrictions and conditions as they think proper, may sell the exclusive right of burial, either in perpetuity or for a limited period, in any part of any burial ground provided by such board, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground, but there shall be payable to the incumbent or minister of the parish out of the fees or payments to be paid in respect of any rights acquired under this enactment in the consecrated part of such burial ground (in lieu of the fees or sums which he would have been entitled to on the grant of the like rights in the burial ground of his parish) such fees or sums as shall be settled and fixed by the vestry with the approval of

Board may sell exclusive rights of burial vaults, and right to erect monuments.

the bishop of the diocese, or if no such fees or sums shall have been so settled, then such fees as he would by law or custom have been entitled to on the grant of the like rights in the burial ground of his parish.

The provisions in this section are, as regards the burial ground provided by the commissioners of sewers for the parishes in the city of London and the liberties thereof, repealed by the 20 & 21 Vict. c. 36, s. 3.

In boroughs for which burial boards have been established these fees will be settled by the council of the borough with the approval or consent of the bishop of the diocese. See 17 & 18 Vict. c. 87, s. 10.

A question has been asked as to whether the fees payable to the incumbent are to be paid to the burial board in addition to the charges made by them for leave to make a vault, &c., under this section, or whether they are to be paid directly to the incumbent by the persons using the ground. The secretary of state for the Home Department is reported to have stated in reply to a communication addressed to him on the subject, that the above section does not impose upon burial boards the duty of receiving the ecclesiastical fees payable in respect of the rights acquired under this section; and that those dues are payable in addition to the fees charged by the board. This construction of the enactment will obviously lead to inconvenience so far as the incumbents of parishes are concerned, and in many instances will practically debar them from obtaining payment of the fees which are legally their due. Looking to the express provision in the 36th & 37th sections for the payment of the ecclesiastical fees to the burial board in certain cases, it appears to be the correct construction of the enactment. However, a remedy to a certain extent is provided by section 37, which enables the vestry, with the consent of the bishop of the diocese, to fix an annual sum to be paid by the burial board to the incumbent, clerk and sexton, in lieu of fees, and requires that the fees to which they would otherwise have been entitled shall then be paid to the burial board. Further on this point see note to 20 & 21 Vict. c. 81, s. 17.

Board to fix payments for interments in burial ground, and for exclusive right of burial vaults, and right to erect monuments.

XXXIV. Every burial board under this Act shall and may (without prejudice to the fees and payments herein specially provided for) fix and settle and receive such fees and payments in respect of interments in any burial ground provided by such board as they shall think fit, and also the sums to be paid for the exclusive right of burial, either in

perpetuity or for a limited period, in any burial ground provided by such board, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground, and every burial board, with the consent of the vestry, may from time to time revise and alter such fees, payments, and sums as aforesaid; and a table showing such fees, payments, and sums, and all other fees and payments in respect of interments in such ground, shall be printed and published, and shall be affixed and at all times continued on some conspicuous part of such burial ground.

The fees for burials are subject to the approval of the secretary of state (18 & 19 Vict. c. 128, s. 7) and those for burials in the consecrated and unconsecrated portions of the burial ground must be identical in amount. 20 & 21 Vict. c. 81, s. 17.

See 17 & 18 Vict. c. 87, s. 8, which enables the council of a borough being a burial board, to fix a higher rate of payment for interments, &c., in respect of outlying parts of any parish partly situate within the borough.

The 18 & 19 Vict. c. 79, s. 2, enables boards of guardians of unions, or the overseers where there are no guardians, to enter into agreements with cemetery companies or burial boards for the burial of the dead bodies of any poor person which such guardians or overseers may undertake to bury; and a like power is given to the visitors of lunatic asylums by the 18 & 19 Vict. c. 105, s. 12, for the burial of the dead bodies of pauper lunatics which they may undertake to bury. That enactment is as follows: "The visitors of lunatic asylums in England may from time to time enter into agreements with the proprietors of any cemetery established under the authority of parliament, or with any burial board duly constituted under the statutes in that behalf, for the burial of the dead bodies of any pauper lunatics which such visitors may undertake to bury; and thereupon the burial of any such body, under the directions of the said visitors or their officer, in such cemetery, or in the burial ground of such burial board, shall be lawful: Provided, however, that no such agreement shall be valid unless made in such form and with such stipulations as the commissioners in lunacy shall approve."

Division of
fees between
incumbents
of parishes
and ecclesi-
astical dis-
tricts.

XXXV. Where at the time of the discontinuance of interment in any burial ground the fees in respect of burials therein are divided between the incumbent of the parish and the incumbent of any district parish or other ecclesiastical district, each incumbent shall have the same proportion of the fees in the burial ground to be provided under this Act as he was entitled to in respect of interments in the old burial ground.

The provisions in this section are, as regards the burial ground provided by the commissioners of sewers for the parishes in the city of London and the liberties thereof, repealed by the 20 & 21 Vict. c. 35, s. 3.

Fees payable
to church-
wardens and
others for
parochial
purposes.

XXXVI. Where fees or any portion of fees payable on interments, or for any monument, gravestone, tablet, or monumental inscription, in the burial ground of any parish for which a burial ground is provided alone or jointly with any other parish or parishes under this Act, are by law or custom payable to the churchwardens of any parish, or to trustees or other persons, for or towards the payment of any annuity or stipend to the incumbent or minister, or any other parochial purpose, or the discharge of any debt or liability, such fees or portion of fees shall be payable in the burial ground to be provided as aforesaid for such parish under this Act, and shall be received by the burial board and paid to the parties entitled to receive the same; and where fees or payments have been received on interments, or for any monument, gravestone, tablet, or monumental inscription, in the burial ground of any such parish by any such churchwardens, or by trustees or other persons, for the purpose of discharging any periodical payment or other liability, it shall be lawful for the burial board, upon the request of such churchwardens, trustees, or persons, to pay from time to time, out of the fees and monies received by them on account of such parish, such amount as

may be necessary for discharging such periodical payment or liability.

The provisions in this section are, as regards the burial ground provided by the commissioners of sewers for the parishes in the city of London and the liberties thereof, repealed by the 20 & 21 Vict. c. 35, s. 3; and further provision is made on the subject by s. 4 of that Act.

XXXVII. It shall be lawful for the vestry of any parish from time to time, if they think fit, with the consent of the bishop of the diocese, to revise and vary the fees payable to the incumbent, clerk, and sexton, and other persons and bodies respectively, under the provisions of this Act, or, with such consent as aforesaid, to substitute for the fees payable to such incumbent, clerk, and sexton, and other persons and bodies respectively, a fixed annual sum of such amount as to such vestry may seem just, to be payable by such periodical payments as such vestry may appoint, and in such last-mentioned case the fees which would otherwise be payable under this Act to the incumbent, clerk, and sexton, and such other persons and bodies respectively, shall be paid to the burial board, and such fixed payments as aforesaid shall be paid by such board.

Power to vestry, with consent of bishop, to revise the fees to incumbent, &c., or to substitute a fixed payment.

In boroughs for which burial boards have been established, the powers given by this section will be exercised by the council of the borough, with the approval or consent of the bishop of the diocese. See 17 & 18 Vict. c. 87, s. 10.

The provisions in this section are, as regards the burial ground provided by the commissioners of sewers for the parishes in the city of London and the liberties thereof, repealed by the 20 & 21 Vict. c. 35, s. 3. The power of the vestry to revise the table of fees extends to the fees payable on the burial of paupers as well as others, and they are not controlled in this respect in any way by the 7 & 8 Vict. c. 101, s. 31, or the 18 & 19 Vict. c. 79, s. 1.

XXXVIII. The general management, regulation, and control of the burial grounds provided under this Act shall, subject to the provisions of

Management to be vested in burial boards.

this Act and the regulations to be made thereunder, be vested in and exercised by the respective burial boards providing the same; provided that any question which shall arise touching the fitness of any monumental inscription placed in any part of the consecrated portions of such grounds shall be determined by the bishop of the diocese.

But for the proviso to this section, the burial board would have had power to determine questions as to the fitness of monumental inscriptions in all parts of the burial ground. Their right to do so as regards the consecrated portion of the burial ground is taken away by the proviso; but it remains as regards the unconsecrated grounds. It will form no part of the duty of the board under this section, or under any other provision in the Burial Acts, to provide a surplice, &c. for the use of the ministers at the burial ground.

Arrange-
ments be-
tween the
incumbents
of parishes.

XXXIX. Where a burial ground is provided under this Act for the common use of two or more parishes, in case any question arise among the incumbents of such parishes as to the performance of the burial service by a chaplain to be paid by means of contributions from such incumbents, or deductions from fees or sums payable to them, or otherwise touching the performance of service in the consecrated part of such ground, the bishop of the diocese shall from time to time confirm any arrangement which a majority, or, in case of equal numbers, one-half of the incumbents shall approve, and such arrangement so confirmed shall be binding upon all the parties concerned.

The chaplain appointed under this section for the cemetery provided by the commissioners of sewers for the parishes of the city of London and the liberties thereof at Little Ilford, must conform to all such regulations of those commissioners as shall not interfere with the performance of the funeral service according to the order of the Established Church. See 20 & 21 Vict. c. 35, s. 7.

With respect to parishes within the city of London and the liberties thereof, for which a cemetery has been provided at Little Ilford, see the 20 & 21 Vict. c. 35.

XL. The provision of "The Cemeteries Clauses Act, 1847," with respect to the protection of the cemetery, shall be incorporated with this Act, and be applicable to any burial ground provided under this Act.

Certain provisions of 10 & 11 Vict. c. 65, incorporated with this Act.

The following are the clauses of "The Cemeteries Clauses Act, 1847," (intituled "An Act for Consolidating in one Act certain Provisions usually contained in Acts authorizing the making of Cemeteries") which relate to the protection of cemeteries.

58. Every person who shall wilfully destroy or injure any building, wall, or fence belonging to the cemetery, or destroy or injure any tree or plant therein, or who shall daub or disfigure any wall thereof, or put up any bill therein or on any wall thereof, or wilfully destroy, injure, or deface any monument, tablet, inscription, or gravestone within the cemetery, or do any other wilful damage therein, shall forfeit to the company for every such offence a sum not exceeding five pounds.

Penalty for damaging the cemetery.

59. Every person who shall play at any game or sport, or discharge fire-arms, save at a military funeral, in the cemetery, or who shall wilfully and unlawfully disturb any persons assembled in the cemetery for the purpose of burying any body therein, or who shall commit any nuisance within the cemetery, shall forfeit to the company for every such offence a sum not exceeding five pounds.

Penalty on persons committing nuisances in the cemetery.

62. The clauses of the Railway Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act; and such clauses shall apply to the cemetery and to the company respectively.

8 & 9 Vict. c. 20, incorporated as to damages, &c.

The clauses in the 8 & 9 Vict. c. 20 above referred to are the following:—

Recovery of damages and penalties, ss. 145, 149, 151-160. By s. 151 the penalties must be sued for within six months after the commission of the offence. But see Jervis's Acts, 11 & 12 Vict. c. 43, s. 11, and 11 & 12 Vict. cc. 42, 44 (Glen's Edition of those Acts).

XLI. Any burial board may make such arrangements as they may from time to time think fit for facilitating the conveyance of the bodies of the

Boards may make arrangements for facilitat-

ing the conveyance of bodies to burial grounds.

dead from the parish or the place of death to the burial ground which shall be provided under this Act, or to any other place of burial, subject to the provisions of this Act, and the regulations to be made thereunder, and it shall be lawful for any of the aforesaid cemetery companies to undertake any such arrangement, and to carry the same into effect, subject to the provisions and regulations as aforesaid.

Places may be provided for reception of bodies until interment.

XLIII. It shall be lawful for any burial board, with the approval of the vestry, and subject to the provisions of this Act, and the regulations to be made thereunder, and for the churchwardens and overseers of the poor in any parish in the metropolis for which a burial board shall not have been appointed under this Act, by the direction of the vestry, and subject as aforesaid, to hire, take on lease, or otherwise to provide fit and proper places in which bodies may be received and taken care of previously to interment, and to make arrangements for the reception and care of the bodies to be deposited therein, and for providing such places such burial boards may exercise the powers vested in them under this Act for providing burial grounds; and such churchwardens and overseers may exercise all such powers as, under the Act of the fifty-ninth year of King George the Third, chapter twelve, or otherwise, the churchwardens and overseers of any parish not having a workhouse might exercise for providing a workhouse for such parish.

With regard to places under a local board of health, it is enacted as follows by the 11 & 12 Vict. c. 63, s. 81: and for the purpose of preventing the manifold evils occasioned by the retention of the dead in the dwellings of the poor, be it enacted, that the local board of health may, and if they shall think fit, provide, fit up, and make bye laws with respect to the management and charges for the use of rooms or premises in which corpses may be received and decently and carefully kept previously to interment; and the said local board may, upon proper application, and subject to such regulations and

at such rates and charges as shall be prescribed by any such bye laws, make all necessary arrangements for the decent and economical interment of any corpse which may have been received into any rooms or premises so provided in pursuance of this enactment.

See 18 & 19 Vict. c. 128, s. 6, which dispenses with the sanction of the vestry in certain cases.

By the 20 & 21 Vict. c. 81, s. 25, it is made unlawful to remove bodies from one burying ground to another, save under faculty, without licence of the secretary of state.

Churchwardens and overseers of parishes beyond the limits of the metropolis cannot provide reception houses for dead bodies, the part of this section which enables churchwardens and overseers to do so being confined to parishes in the metropolis.

* XLIII. The provisions herein-before contained for the appointment of burial boards shall not apply to any parish within the limits of the city of London and the liberties thereof; but it shall be lawful for the mayor, aldermen, and commons of the said city in common council assembled, if and when they see fit so to do, to authorize and direct the commissioners of sewers of the city of London to exercise for the said city and liberties all the powers and authorities vested in burial boards under this Act; and thereupon such commissioners shall have and exercise for and on behalf of the said city and liberties all such powers and authorities as are hereby vested in the burial board for any parish, or which might be exercised by such board with the approval of the vestry; but the expenses to be incurred by such commissioners in providing and laying out any burial ground or burial grounds under this Act, and building the necessary chapel or chapels therein, shall not exceed such sum as the said mayor, aldermen, and commons in common council assembled shall authorize to be expended for this purpose; and the money required for defraying the expenses incurred under this Act by the said commissioners shall be charged upon and payable out of the consolidated rate authorized to be made by "The City of London Sewers Act,

The commissioners of sewers of the city of London to be a burial board for the parishes in the city and its liberties.

1848," or any monies applicable for defraying the expenses by the said Act charged upon or payable out of such rate; and the income of any burial ground provided under this Act by such commissioners, which if such ground had been provided by a burial board for any parish would be applicable in aid of the rate for the relief of the poor of. such parish, shall be applicable in aid of the said consolidated rate; and the provisions contained in "The City of London Sewers Act, 1848," for the purpose (as therein expressed) of enabling the said commissioners to effect the purchases therein authorized, shall be applicable for the purpose of enabling the said commissioners to purchase land for the purposes of this Act; and the powers for and auxiliary to the sale and disposal of land given or expressed to be given by "The City of London Sewers Act, 1848," and "The City of London Sewers Act, 1851," with respect to land purchased by the said commissioners for any of the purposes mentioned in such last-mentioned Act, and deemed by them unnecessary for such purposes, shall be applicable with respect to any land purchased by the said commissioners for the purposes of this Act which may not appear to them to be wanted for such purposes; and all the provisions of the said City of London Sewers Acts applicable to the exercise of the powers vested in the said commissioners shall be applicable to and for the purposes of this Act, as if the powers which under this Act may become vested in such commissioners had been powers vested in them under the said "City of London Sewers Act, 1848;" provided that it shall be lawful for the said mayor, aldermen, and commons to appoint any incumbent or incumbents of any parish or parishes within the said city or liberties to act with the said commissioners for the purposes of this Act.

The Commissioners of Sewers, in pursuance of the powers hereby given to them, having provided and constructed a large

and spacious cemetery in the parish of Little Ilford, in the county of Essex, at an expense of £75,000, burials in such cemetery and the fees to be paid to the incumbents, &c. of the parishes in the city of London were further regulated by the 20 & 21 Vict. c. 85.

XLIV. It shall be lawful for one of Her Majesty's principal secretaries of state from time to time to make such regulations in relation to the burial grounds and places for the reception of bodies previously to interment which may be provided under this Act as to him may seem proper, for the protection of the public health and the maintenance of public decency, and the burial boards and all other persons having the care of such burial grounds and places for the reception of bodies shall conform to and obey such regulations.

Secretary of state may make regulations as to burial grounds, &c.

Any regulations which may be made with regard to interments in cemeteries or burial grounds, will, during the continuance of any order in council issued in pursuance of s. 5 of the 18 & 19 Vict. c. 116, "Diseases Prevention Act, 1855," be subject to any directions and regulations which the General Board of Health may issue "for the speedy interment of the dead," under s. 6 of that Act. The 18 & 19 Vict. c. 128, s. 8, further enables the secretary of state to appoint and authorize any person to inspect any burial ground or cemetery, parochial or non-parochial, or place for the reception of bodies, and to ascertain the condition thereof. See 20 & 21 Vict. c. 85, s. 10, as to regulations for burials in cemeteries in Schedule B. of this Act. The regulations issued by the secretary of state will be found in the Appendix.

* XLV. And whereas the General Board of Health have, under the powers of the said Metropolitan Interments Act, 1850, taken proceedings for the purchase of the cemetery of the West of London and Westminster cemetery company (commonly called the Brompton cemetery), and the amount of the purchase money has been ascertained by arbitration, but such purchase may not have been completed at the time of the passing of this Act:

Brompton cemetery vested in commissioners of works.

In case at the time of the passing of this Act the

said cemetery has not been conveyed to the General Board of Health, the rights and obligations of the General Board of Health with reference to the purchase of the said cemetery shall upon the passing of this Act become transferred to the commissioners of Her Majesty's works and public buildings; and in case the said cemetery shall be conveyed to them by virtue of the transfer hereby made of such rights and liabilities, then immediately upon such cemetery being so conveyed, or in case at the time of the passing of this Act the said cemetery has been conveyed to the General Board of Health, then from and after the passing of this Act the said cemetery shall, without any further conveyance, become vested in the said commissioners of Her Majesty's works and public buildings, and their successors, in the like corporate capacity in which any lands, tenements or hereditaments are vested in them under the Act of this last session of parliament, chapter forty-two, but subject to the rights to graves, vaults, and monuments subject to which such cemetery may have been conveyed to such commissioners or to the General Board of Health, as the case may be, and subject to the powers and for the purposes hereinafter mentioned.

Money authorized to be advanced under 14 & 15 Vict. c. 89, may be applied in completing the purchase of the Brompton cemetery.

* XLVI. And whereas by an Act of the last session of parliament, chapter eighty-nine, the commissioners of Her Majesty's treasury are authorized to cause to be issued and advanced to the General Board of Health, out of the produce of the consolidated fund of the United Kingdom, a sum or sums not exceeding in the whole one hundred and thirty-seven thousand pounds, to be applied to the purposes to which money borrowed by the said Metropolitan Interments Act, 1850, is by the said Act made applicable:

It shall be lawful for the commissioners of Her

Majesty's treasury to cause to be advanced or issued to and applied by the Commissioners of Her Majesty's works and public buildings, out of the said consolidated fund, such part of the said sum of one hundred and thirty-seven thousand pounds as the said commissioners of Her Majesty's treasury may think fit for the completion of the purchase of the said Brompton cemetery, in case such purchase shall not have been completed at the time of the passing of this Act, and for the care and management of the said cemetery; and the said commissioners of the treasury may also cause to be issued and advanced and applied such part of the said sum of one hundred and thirty-seven thousand pounds as the said commissioners of the treasury shall think fit in discharge of any liabilities of the said General Board of Health incurred under the powers of the said Metropolitan Interments Act, 1850, without requiring in the cases aforesaid any mortgage to be made for such advances.

* XLVII. After payment to the said West of London and Westminster cemetery company, either by the General Board of Health or by the commissioners of Her Majesty's works and public buildings, of the purchase or consideration money for the said Brompton cemetery, the said West of London and Westminster cemetery company shall continue only for the purpose of winding up the affairs and realizing and distributing the assets thereof, and satisfying any debts or engagements to or by the said company, and for the enforcement by law or in equity of such debts or engagements respectively, and the said company as soon as conveniently may be after the payment of such purchase or consideration money, shall convert into money, by sale or otherwise, the effects of the said company, and get in the debts and assets thereof, and distribute and apportion the monies thence arising, together with such purchase or consideration money, after satisfy-

Provision for winding up the West of London and Westminster cemetery company.

ing all the debts, engagements, and liabilities of the said company, to and among the several proprietors thereof, according to their respective shares and interests therein; and from and immediately after such distribution and apportionment the said company shall be dissolved, and the receipt of every person who for the time being would have been entitled to give an effectual discharge for any dividends which might have become payable in respect of any share in the said cemetery, or in the capital stock of the said company, in case the said Metropolitan Interments Act and this Act had not been passed, for the proportion of the monies which under this provision shall become payable in respect of such share, shall be an effectual discharge to the said company and the directors thereof for the same.

Brompton cemetery may be sold by direction of the treasury, and in the meantime used for interments.

* XLVIII. The said commissioners of works and public buildings shall and may, in case the said Brompton cemetery be vested in them by or under this Act, sell and dispose of the same or any part thereof, subject to the rights affecting the same, as the commissioners of Her Majesty's treasury may direct; and in the meantime, until such sale, the secretary of state may and shall permit the same to be used for the purposes of interment, upon such terms and conditions as he shall think fit; and the residue of the monies arising from the sale and disposal of the said cemetery, or any part thereof, and in respect of the interments therein, after defraying the expenses incident to such sale and to the care and management of the cemetery, until the whole thereof shall be sold and disposed of, shall be paid to the metropolitan interments repayments account mentioned in the said Act of the last session of parliament, to be carried to the said consolidated fund.

Limiting the compensation fee to be

* XLIX. Where any body is buried in any of the cemeteries mentioned in Schedule (B.) to this

Act, at the expense of any union or parish, the fee payable on or sum to be paid or payable on the interment of pauper burials in such body, or otherwise in respect thereof, to the incumbent of the parish or ecclesiastical district from which such body is removed for interment, shall not exceed the sum of one shilling, or where the incumbent now receives in respect of the like burial in the ground of his parish more than one shilling, shall not exceed the sum so now received, and in no case shall exceed two shillings and sixpence; and no other fee or sum whatsoever shall be payable in respect of such interment, to or for the use of any person as an officer of such parish or district, or for or on behalf of such parish or district, anything in any Act mentioned in the said Schedule (B.) or any other Act notwithstanding.

See 16 & 17 Vict. c. 134, s. 7, which enacts, that this section shall extend to all cemeteries already established and hereafter to be established under the authority of parliament in like manner as to those mentioned in Schedule (B.) to this Act; and as regards cemeteries to which this section is thereby extended, that it shall also apply in respect of burials at the expense of any hospital or infirmary in like manner as to burials at the expense of a union or parish.

The 20 & 21 Vict. c. 35, makes further provision with respect to fees on burials in the cemetery at Little Ilford provided for the parishes in the city of London and the liberties thereof by the commissioners of sewers. See also ss. 34, 35, 36, 37, *ante*.

L. Where under any local Act fees on interments in any burial ground of any parish in the metropolis are payable to the churchwardens of such parish, or to any trustees or other persons, for the purpose of enabling them to pay an annuity or stipend to the incumbent or minister, the fees which under this Act, or any Act relating to any cemetery company, would on the interment in the cemetery of any company of any body brought from such parish be payable to such incumbent or minister, shall be payable to the said churchwardens, trustees, or persons, and any surplus of such fees which Incumbents compensations to be payable to the churchwardens where the fees on burials are now paid to them, and the incumbents are not entitled.

may remain in their hands after payment of such annuity or stipend shall be paid to such incumbent or minister.

The provisions in this section are, as regards the burial ground provided by the commissioners of sewers for the parishes in the city of London and the liberties thereof, repealed by the 20 & 21 Vict. c. 35, s. 3.

Power for incumbent or churchwardens to convey chapel.

LI. Where any burial ground in which interment is discontinued under this Act belongs to any parish other than the parish within which the same is locally situate, it shall be lawful for the incumbent and churchwardens of the parish to which such burial ground belongs, with the consent of the vestry, or persons possessing the powers of vestry for ecclesiastical purposes of or in such parish, and of the bishop of the diocese, to convey any chapel belonging to such parish, and situate in or attached to such burial ground, and the site thereof, to any persons named by the incumbent and churchwardens of the parish within which the same is situate, with the consent of the vestry, or persons possessing the powers of vestry of or in such parish for ecclesiastical purposes, and of the said bishop, and upon such trusts for such last-mentioned parish, and subject to such conditions to be performed on behalf of such parish, and with such provision for the appointment of new trustees, as to the said bishop may seem proper; and such conveyance shall be effectual to pass all the estate and interest vested in any persons in trust or in behalf of the parish to which such chapel and the site thereof belong; and after the execution of such conveyance all obligation on such last-mentioned parish, or any trustees or others on behalf thereof, to repair such chapel, or to pay any stipend to the minister thereof, or otherwise in relation to or in connexion with such chapel shall cease.

It was sometimes the case that parishes in the metropolis possessed burial grounds and chapels attached to them in

other parishes. The provision in this section enabled the parishes to which such burial grounds and chapels belonged to convey any such chapel to trustees for the use of the parishioners of the parish in which it was locally situate. See also 20 & 21 Vict. c. 81, s. 8, which enables the vestry of the parish in which the ground is situate to purchase the ground instead of the vendors conveying it to trustees under this section.

With regard to the keeping of old burial grounds and the fences of them in repair, see 18 & 19 Vict. c. 128, s. 18.

LII. In this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say,—

Interpretation of terms.

“Parish” shall mean every place having separate overseers of the poor, and separately maintaining its own poor :

“Ratepayers” shall mean the persons for the time being assessed to and paying rates for the relief of the poor of the parish :

“Incumbent” and “minister” shall, in respect of any fee made payable to an incumbent or minister under this Act, mean the clergyman who would have been entitled to the fee had the body been buried in the churchyard or burial ground of the parish from which it came, or in the burial ground of the ecclesiastical district in case such district has a burial ground at the passing of this Act, and if any difference shall arise between two or more persons severally claiming to be the incumbent or minister under this provision, such difference shall be determined by the bishop of the diocese :

“Churchwardens” shall mean also chapelwardens, or other persons discharging the duties of churchwardens :

“Overseers” shall mean also any persons authorized and required to make and collect or cause to be collected the rate for the relief of the

poor of the parish, and acting instead of overseers of the poor :

“ Vestry ” shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select or other vestry elected under an Act of the fifty-ninth year of King George the Third, chapter twelve, “ to amend the Laws for the Relief of the Poor,” or elected under an Act passed in the second year of King William the Fourth, chapter sixty, “ for the better Regulation of Vestries, and for the Appointment of Auditors of Accounts, in certain Parishes of England and Wales,” or elected under the provisions of any local Act of parliament for the government of any parish by vestries, in which parishes it shall mean such select or other vestry :

“ Clerk ” shall mean the clerk appointed pursuant to this Act by any burial board appointed under this Act.

With respect to the term “ vestry,” see s. 10, and *note* thereon.

Definition of
“ the metro-
polis.”

* LIII. For the purposes of this Act, the expression “ the metropolis ” shall be construed to mean and include the cities and liberties of London and Westminster, the borough of Southwark, and the parishes, precincts, townships, and places mentioned in the Schedule (A.) to this Act.

The Metropolis Local Act, 18 & 19 Vict. c. 120, s. 91, provides that, save as regards the appointment of auditors, nothing in that Act shall divest the vestry of any parish or any commissioners or burial board appointed by any vestry, of any powers or property vested in them respectively under the provisions of the 15 & 16 Vict. c. 85, or any Act amending the same, or in anywise affect the provisions of any of these Acts.

Saving rights
of cemetery
companies.

* LIV. Provided always, that nothing in this Act contained shall extend to take away, diminish, alter,

or prejudice any of the rights, powers, or authorities vested in any of the cemetery companies incorporated under the several Acts mentioned in the said Schedule (B.) to this Act, but all such rights, powers, and authorities shall be as good, valid, and effectual as if this Act had not passed.

But see the subsequent enactment, 20 & 21 Vict. c. 81, s. 10, which enables the Queen in council to make regulations for the protection of public health, and for the maintenance of public decency in respect of all burials in common graves in the cemeteries named in Schedule (B).

***SCHEDULE (A.)**

The city of London and the liberties thereof, the Inner Temple and Middle Temple, and all other places and parts of places contained within the exterior boundaries of the liberties of the city of London.

IN MIDDLESEX.

The City and Liberties of Westminster.

The parishes of St. Margaret and St. John the Evangelist.

The parish of St. Martin in the Fields.

The parish of St. George, Hanover-square.

The parish of St. James.

The parish of St. Mary-le-Strand, as well within the liberty of Westminster as within the Duchy liberty.

The parish of St. Clement Danes, as well within the liberty of Westminster as within the Duchy liberty.

The parish of St. Paul, Covent Garden.

The parish of St. Anne, Soho.

Whitehall Gardens (whether the same be parochial or extra-parochial).

Whitehall (whether the same be parochial or extra-parochial).

Richmond Terrace (whether the same be parochial or extra-parochial).

The close of the Collegiate Church of St. Peter.

The parishes of St. Giles in the Fields and St. George, Bloomsbury.

The parishes of St. Andrew, Holborn, and St. George the Martyr.

The liberty of Hatton Garden, Saffron Hill, and Ely Rents.

The liberty of the Rolls.

The parish of St. Pancras.

The parish of St. John, Hampstead.

The parish of St. Marylebone.

The parish of Paddington.

The precinct of the Savoy.

The parish of St. Luke.

The liberty of Glasshouse yard.

The parish of St. Sepulchre.

The parish of St. James, Clerkenwell, including both districts of St. James and St. John.

The parish of St. Mary, Islington.

The parish of St. Mary, Stoke Newington.

The Charterhouse.

The parish of St. Mary, Whitechapel.

The parish of Christchurch, Spitalfields.

The parish of St. Leonard, Shoreditch.

The liberty of Norton Falgate.

The parish of St. John, Hackney.

The parish of St. Matthew, Bethnal Green.

The hamlet of Mile End Old Town.

The hamlet of Mile End New Town.

The parish of St. Mary Stratford, Bow.

The parish of Bromley St. Leonard.

The parish of All Saints, Poplar.

The parish of St. Anne, Limehouse.
The hamlet of Ratcliffe.
The parish of St. Paul, Shadwell.
The parish of St. George in the East.
The parish of St. John, Wapping.
The liberty of East Smithfield.
The precinct of St. Catherine.
The liberty of Her Majesty's Tower of London,
consisting of—
 The liberty of the Old Artillery Ground.
 The parish of Trinity, Minories.
 The Old Tower Precinct.
 The precinct of the Tower Within.
 The precinct of Wellclose.
The parish of Kensington.
The parish of St. Luke, Chelsea.
The parish of Fulham.
The parish of Hammersmith.
Lincoln's Inn.
New Inn.
Gray's Inn.
Staple Inn.
That part of Furnival's Inn in the county of
 Middlesex.
Ely Place.
The parish of Willesden.

IN KENT.

The parish of St. Paul, Deptford.
The parish of St. Nicholas, Deptford.
The parish of Greenwich.
The parish of Woolwich.
The parish of Charlton.
The parish of Plumstead.

IN SURREY.

 The Borough of Southwark.
The parish of St. George the Martyr.
The parish of St. Saviour.

The parish of St. John, Horsleydown.
 The parish of St. Olave.
 The parish of St. Thomas.

The parish of Battersea (except the hamlet of Penge.
 The parish of Bermondsey.
 The parish of Camberwell.
 The parish of Clapham.
 The parish of Lambeth.
 The parish of Newington.
 The parish of Putney.
 The parish of Rotherhithe.
 The parish of Streatham.
 The parish of Tooting.
 The parish of Wandsworth.
 The parish of Christchurch.
 The Clink liberty.
 The hamlet of Hatcham in the parish of Deptford.

* SCHEDULE (B).

The several Cemeteries established under the several Acts hereinafter mentioned; viz.—

2 & 3 W. 4,
 c. cx.

An Act for establishing a General Cemetery for the Interment of the Dead in the Neighbourhood of the Metropolis:

6 & 7 W. 4,
 c. cxxxix.

An Act for establishing a Cemetery for the interment of the Dead southward of the Metropolis, to be called the "South Metropolitan Cemetery:"

6 & 7 W. 4,
 c. cxxxvi.

An Act for establishing Cemeteries for the Interment of the Dead northward, southward, and eastward of the Metropolis, by a Company to be called "The London Cemetery Company:"

1 Vict.
 c. cxxx.

An Act for establishing a Cemetery for the Interment of the Dead westward of the Metropolis, by a

Company to be called "The West of London and Westminster Cemetery Company:" And

An Act to establish a General Cemetery for the Interment of the Dead in the Parishes of Saint Dunstan, Stepney and Saint Leonard, Bromley in the County of Middlesex. ^{4 & 5 Vict. c. lxxiii.}

The Victoria Park Cemetery in the Parish of Saint Matthew, Bethnal Green in the county of Middlesex: And

The Abney Park Cemetery in the parish of Saint Mary, Stoke Newington in the County of Middlesex.

As to the regulation of these cemeteries, see 20 & 21 Vict. c. 85, s. 10, which empowers the Queen by an order in council to make regulations in respect of all burials in common graves in such cemeteries.

16 & 17 VICT. CAP. 134.

An Act to amend the Laws concerning the Burial of the Dead in England beyond the Limits of the Metropolis, and to amend the Act concerning the Burial of the Dead in the Metropolis.

[20th August, 1853.]

WHEREAS an Act was passed in the last session of parliament, "to amend the Laws concerning the Burial of the Dead in the Metropolis," and it is expedient to make better provision for and in relation to burials beyond the limits of the said Act: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

I. In case it appear to Her Majesty in council, upon the representation of one of Her Majesty's ^{On representation of secretary of}

state, Her Majesty in council may restrain the opening of new burial grounds, and order discontinuance of burials in specified places.

principal secretaries of state, that for the protection of the public health the opening of any new burial ground in any city or town, or within any other limits, save with the previous approval of one of such secretaries of state, should be prohibited, or that burials in any city or town, or within any other limits, or in any burial grounds or places of burial, should be wholly discontinued, or should be discontinued subject to any exception or qualification, it shall be lawful for Her Majesty, by and with the advice of Her privy council, to order that no new burial ground shall be opened in such city or town, or within such limits, without such previous approval, or (as the case may require) that after a time mentioned in the order burials in such city or town, or within such limits, or in such burial grounds or places of burial, shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such order, and so from time to time as circumstances may require: Provided always, that notice of such representation, and of the time when it shall please Her Majesty to order the same to be taken into consideration by the privy council, shall be published in the *London Gazette*, and shall be affixed on the doors of the churches or chapels of, or on some other conspicuous places within, the parishes affected by such representation, one month before such representation is so considered: Provided also, that no such representation shall be made in relation to the burial ground of any parish until ten days previous notice of the intention to make such representation shall have been given to the incumbent and the vestry clerk or churchwardens of such parish.

The Public Health Act, 1848 (11 & 12 Vict. c. 63, s. 8), enables the General Board of Health, upon petition, or without petition in certain cases, to direct a superintending inspector to visit any city (excepting the city of London and the districts comprising the metropolis) town, borough, parish or place, and to make public inquiry, and to examine witnesses

as to the state of the burial grounds thereof. After a local board of health has been established under that Act for any place, proceedings may be taken by such local board, with a view to the closing any burial ground. The following is the enactment on this subject:—

Sect. 82. And be it enacted, that if upon the representation of the Local Board of Health, and after inquiry and report by a superintending inspector, notified to the lord bishop of the diocese, and made, notified, and published in manner hereinbefore directed with respect to the inquiry and report of superintending inspectors previously to the constitution of a district under this Act, and after inquiry by such other ways and means as the General Board of Health may think fit to direct, the said General Board shall certify (such certificate to be published in the *London Gazette*, and in some one or more of the public newspapers usually circulated within the district) that any burial ground situate within any district to which this Act is applied is in such a state as to be dangerous to the health of persons living in the neighbourhood thereof, or that any church or other place of public worship within any such district is dangerous to the health of persons frequenting the same, by reason of the surcharged state of the vaults or graves within the walls of or underneath the same, and that sufficient means of interment exist within a convenient distance from such burial ground, church, or place of public worship, it shall not be lawful, after a time to be named in such certificate, to bury or permit or suffer to be buried any further corpses or coffins in, within, or under the ground, church, or place of worship to which the certificate relates, except in so far as may be allowed by such certificate; and whosoever, after notice of such certificate, buries, or causes, permits, or suffers to be buried, any corpse or coffin contrary to this enactment, shall for every such offence be liable to a penalty of twenty pounds.

It is further enacted by the same Act, s. 83, that no vault or grave shall be constructed or made within the walls of or underneath any church or other place of public worship built in any district after the passing of this Act, and no burial ground shall be made or formed within any district after the passing of this Act, without the consent of the General Board of Health first had and obtained, unless the same be made or formed upon land purchased or authorized by parliament to be appropriated for the purpose of being used as a burial ground before the passing of this Act; and whosoever shall bury, or cause, permit, or suffer to be buried, any corpse or coffin in any vault, grave, or burial ground constructed, made, or formed contrary to this enactment, shall for every such offence be liable to a penalty not exceeding fifty pounds, which may be recovered by any person, with full costs of suit, in an action of debt.

As regards the providing of burial grounds and the esta-

*Burial
Grounds.*

Burial grounds, &c. dangerous to health may be prohibited.

As to interments within churches or burial grounds newly erected or formed.

blishment of burial boards for parishes wholly or partly within boroughs, see 17 & 18 Vict. c. 87, s. 1; and as regards the postponement or variation of orders in council made under this Act, see 18 & 19 Vict. c. 128, s. 1.

Order not to extend to burial grounds of Quakers or Jews, unless expressly included.

II. No such order in council as aforesaid shall be deemed to extend to any burial ground of the people called Quakers, or of the persons of the Jewish persuasion, used solely for the burial of the bodies of such people and persons respectively, unless the same be expressly mentioned in such order; and nothing in this Act shall prevent the burial in any such burial ground in which for the time being interment is not required to be discontinued of the bodies of such people and persons respectively; and no such order in council as aforesaid shall be deemed to extend to any non-parochial burial ground being the property of any private person, unless the same be expressly mentioned in such order.

Unless a vestry clerk is appointed for the parish under the 13 & 14 Vict. c. 57, or under the provision of some local Act, (if any shall have been passed for the particular parish or place), it will be safer to give the notice under this section to the churchwardens of the parish. See note to section 2 of the 15 & 16 Vict. c. 85, *ante*.

Burial not to take place after order in council for discontinuance.

III. It shall not be lawful, after the time mentioned in any such order in council for the discontinuance of burials, to bury the dead in any church, chapel, churchyard, or burial place, or elsewhere within the parts to which such order extends, or in the burial grounds or places of burial (as the case may be) in which burials have by any such order been ordered to be discontinued, except as in this Act or in such order excepted; and every person who shall, after such time as aforesaid, bury any body, or in anywise act or assist in the burial of any body, contrary to this enactment, shall be guilty of a misdemeanor.

The 18 & 19 Vict. c. 128, s. 2, imposes a penalty on persons burying contrary to the provisions of orders in council. Sec-

tion 8, *ib.* imposes a penalty not exceeding 10*l.* for obstructing an inspector of burial grounds, or violating regulations imposed by the Act.

IV. Provided always, that, notwithstanding any such order in council, where by virtue of any faculty legally granted, or by usage or otherwise, there is at the time of the passing of this Act any right of interment in or under any church or chapel affected by such order, or in any vault of any such church or chapel, or of any churchyard or burial ground affected by such order, and where any exclusive right of interment in any such burial ground has been purchased or acquired before the passing of this Act, it shall be lawful for one of Her Majesty's principal secretaries of state, from time to time, on application being made to him, and on being satisfied that the exercise of such right will not be injurious to health, to grant licence for the exercise of such right during such time and subject to such conditions and restrictions as such secretary of state may think fit, but such licence shall not prejudice or in anywise affect the authority of the ordinary, or of any other person who, if this Act had not been passed, might have prohibited or controlled interment under such right, nor dispense with any consent which would have been required, nor otherwise give to such right any greater force or effect than the same would have had if this Act had not been passed.

Saving of certain rights to bury in vaults, &c.

See 20 & 21 Vict. c. 81, s. 23, with respect to the precautions which by an order in council may be directed to be taken, in order to prevent vaults, &c. being dangerous to health.

A prescriptive right of burial in the chancel of a church, claimed as belonging to a message, was allowed in *Waring v. Griffiths*, 1 Burr. 440; 2 Lord Ken : 183; but this right must now be exercised, subject to the provisions of this Act.

V. The provisions of this Act shall not extend to authorize the discontinuance of burials, or to prevent the burial of the body of any person, in any cemetery established under the authority of any Act of par-

Not to extend to cemeteries established by Act of parliament,

or new burial grounds,
&c.

liament, or in any burial ground or cemetery to be hereafter provided with the approval of one of Her Majesty's principal secretaries of state, as herein mentioned.

A question has arisen upon this section as to whether the word "cemetery" comprehends a burial ground provided for a parish under the Church Building Acts, so as to bring such burial ground within the exception. The word cemetery comprehends every place of burial, whether it be a churchyard or a place of sepulture, unconnected with any church; and both in its original meaning and as commonly used, Lord Campbell, C. J., says that it is quite sufficient to comprehend all Christian burial grounds. It has been held that the words in the section—"cemeteries established under the authority of any Act of Parliament"—apply only to cemeteries established by companies authorized by Act of parliament, and not to a burial ground annexed to a district church erected under the Church Building Acts (*R. v. Maude and another, JJ. of Manchester*, 5 Ell. & Bl. 702; 25 L. J. R. n. s., Q. B. 45; 2 Jur. n. s. 182). The following statement of facts will more clearly illustrate the point which was decided in that case. By an order in council, dated 21st May, 1855, duly made and published, it was ordered amongst other things that, except in existing private vaults and graves, no more than one body should be buried in any grave in St. George's Churchyard, Hulme, in Manchester, from and after the 1st June then next. The church and the churchyard were duly consecrated, and were established and provided under the authority of the Church Building Acts, and by an order of council, dated 23rd March, 1841, a district was assigned to St. George's Church under these Acts, and such district was under the 13 & 14 Vict. c. 41, legally constituted a parish for ecclesiastical purposes. A complaint was made under the 16 & 17 Vict. c. 134, and 18 & 19 Vict. c. 128, before a justice of the peace for the city of Manchester, that the Rev. W. Whitelegg, the Rector of St. George's, Hulme, did, on the 2nd September, 1855, "knowingly and wilfully bury and inter, and assist in the burial and interment of the bodies of two persons in one and the same grave in the churchyard of the said parish of St. George's, Hulme, and not in a private vault or grave therein, in violation of the said statutes and of an order in council of the 21st May, 1855. Upon these facts it was contended on behalf of Mr. Whitelegg that St. George's churchyard was exempt from the operation of the 16 & 17 Vict. c. 134, and 18 & 19 Vict. c. 128, on the ground that it was a cemetery established under the authority of an Act of parliament; and the justices being doubtful whether they had jurisdiction declined to adjudicate upon the complaint. A rule was accordingly moved for under

the 11 & 12 Vict. c. 44, s. 5, calling upon the justices and Mr. Whitelegg to show cause why they should not adjudicate upon the complaint. It was thereupon held that the order of the Queen in council was valid; that the magistrates had jurisdiction to hear the information which charged an infraction of that order; and the rule prayed for accordingly issued—the effect of the decision being to put a construction upon the expression “cemeteries established under the authority of any Act of parliament,” as before stated.

VI. Where by any such order in council as aforesaid it is ordered that no new burial ground shall be opened in any city or town, or within any limits therein mentioned, without the previous approval of one of Her Majesty’s principal secretaries of state, no new burial ground or cemetery (parochial or non-parochial) shall be provided and used in such city or town, or within such limits, without such previous approval.

New burial grounds not to be opened contrary to order in council.

VII. All the provisions contained in the said Act of the last session of parliament, chapter eighty-five, “to amend the Laws concerning the Burial of the Dead in the Metropolis,” from section ten to section forty-two (both inclusive) of the said Act, and also in sections forty-four, fifty, fifty-one, and fifty-two of the said Act, shall extend and be applicable to and in respect of any parish not in the metropolis, and for the purpose of providing a burial ground for any such parish, or otherwise providing for the interment of the bodies of persons who would have had right of interment in the burial ground of any such parish, and generally in relation to every such burial ground to be so provided, and the fees and payments to be received in respect of interment or other rights therein and otherwise, as if such sections were re-enacted in this Act, and the words “in the metropolis,” wherever they occur in such sections, or any of them, were omitted; and section forty-nine of the said Act shall extend to all cemeteries already established and hereinafter to be established under the authority of parliament in like manner as

Certain provisions of Metropolitan Burial Act, 15 & 16 Vict. c. 85, extended to parishes, &c. not in the metropolis.

Any burial board building a chapel for burials according to the rites of the church of England also to build a chapel for persons not being members of the church of England.

to those mentioned in Schedule (B.) to that Act, and as respects the cemeteries to which such section is hereby extended, the same shall also apply in respect of burials at the expense of any hospital or infirmary in like manner as to burials at the expense of a union or parish: Provided always, that in all cases in which any burial board shall provide a new burial ground under the said Act of the last session of parliament or under this Act, that new burial ground shall be divided into consecrated and unconsecrated parts, in such proportions, and the unconsecrated part thereof shall be allotted in such manner and in such portions, as may be sanctioned by one of Her Majesty's principal secretaries of state; and when any burial board shall by virtue of section thirty of the said Act build on any burial ground provided by such board a chapel for the performance of the burial service according to the rites of the united church of England and Ireland, they shall also build, on the portion of such ground set apart for burials otherwise than according to the rites of the said church, such chapel accommodation for the performance of burial service by persons not being members of the said church as may be approved of by one of Her Majesty's secretaries of state.

The 18 & 19 Vict. c. 128, s. 10 enables new burial ground provided for the parish under the 15 & 16 Vict. c. 85, s. 25 to be conveyed and settled in all respects as the existing burial ground of the parish.

With respect to building a chapel for dissenters, the 18 & 19 Vict. c. 128, s. 14 enacts that there shall be no obligation on the burial board to build a chapel for persons not members of the church of England when the secretary of state shall, upon a representation of three-fourths of the vestry, declare it unnecessary: and the 20 & 21 Vict. c. 81, s. 3 has further provided that instead of the burial board setting apart a portion of the burial ground to be used as unconsecrated burial ground, the board may provide separate and distinct grounds to be used respectively as consecrated and unconsecrated burial grounds, and the same Act *ex post facto* legalizes such separate burial grounds where they had already been provided.

In s. 5 the excepting words used apply to "any cemetery established under the authority of any Act of parliament."

By this section the provisions in s. 49 of the 15 & 16 Vict. c. 85 shall extend to all cemeteries already established and hereafter to be established "under the authority of parliament." But in *R. v. Maude and another*, 25 L. J. R. n. s., M. C. 45; 2 Jur. n. s. 182, it has been decided that the words "cemeteries established under the authority of any Act of parliament," in s. 5, refer to cemeteries established as commercial speculations. It is apprehended that in interpreting both sections, the courts would give the same construction to each formula of words. "Under the authority of parliament" must necessarily mean under the authority of an Act of parliament, for the authority of parliament in such a matter can only be so expressed. Therefore the fees limited by the 15 & 16 Vict. c. 85, s. 49 to be paid on the burial of a dead body under the directions of a board of guardians, in any cemetery or burial ground, must have reference only to cemeteries which are established as commercial speculations, and not to cemeteries or burial grounds established under the authority of the Church Building Acts, or of any local Act of parliament or under the Burial Board Acts.

See 20 & 21 Vict. c. 81, s. 11 as to the division or boundary marks between the consecrated and unconsecrated portions of burial grounds; and also ss. 12 & 13 as to burying in the ground in certain cases before consecration.

VIII. All burials within any burial ground provided under the said Act of the last session of parliament or this Act shall be registered in a register book to be provided by the burial board providing such ground (or, where the same is provided by the commissioners of sewers of the city of London, then by such commissioners), and kept for that purpose according to the laws in force by which registers are required to be kept by the rectors, vicars, or curates of parishes or ecclesiastical districts in England; and such register book shall be so kept by some officer appointed by the said board or commissioners to that duty; and in such register books shall be distinguished in what parts of the burial ground, and where the whole of such burial ground is not consecrated for interments according to the rites of the united church of England and Ireland, whether in the portion so consecrated or in the portion not so consecrated the several bodies (the burials

Register of burials to be kept in every ground provided under 15 & 16 Vict. c. 85, or under this Act.

Entries to be evidence.

of which are entered in such register books) are buried; and in case such burial ground has been provided for more than one parish, such register shall be kept or indexed so as to facilitate searches for entries in such books in respect of bodies from the several parishes; and such register books, or copies or extracts therefrom, shall be received in all courts as evidence of the burials entered therein, and copies or transcripts of such register books, verified and signed by such officer as aforesaid, shall be from time to time sent to the registrar of the diocese, to be kept with the copies of the other register books of the parishes within such diocese; and the said register books, so far as respects searches to be made therein and copies and extracts to be taken therefrom, shall be subject to the same regulations as are provided by an Act passed in the seventh year of King William the Fourth, intituled "An Act for registering Births, Deaths, and Marriages in England," so far as such regulations relate to register books of burials kept by any rector, vicar, or curate.

6 & 7 W. 4,
c. 86.

The 20 & 21 Vict. c. 81, s. 15 makes it felony to destroy wilfully register books of burials or to make false entries therein, or counterfeit the seal of any burial board. The 15th section of the same Act makes it unnecessary for any minister who may perform the funeral service in the burial ground to give notice thereof to the rector, &c., of the parish in which the burial ground is situated, pursuant to the 52 Geo. 3, c. 146, s. 4.

The following are the provisions of the Registration Act with regard to burials; 6 & 7 W. 4, c. 86, s. 27:—And be it enacted that every registrar, immediately upon registering any death, or as soon thereafter as he shall be required so to do, shall, without fee or reward, deliver to the undertaker or other person having charge of the funeral, a certificate under his hand, according to the form of Schedule (E.) to this Act annexed, that such death has been duly registered, and such certificate shall be delivered by such undertaker or other person to the minister or officiating person who shall be required to bury or to perform any religious service for the burial of the dead body, and if any dead body shall be buried for which no certificate shall have been so delivered, the person who shall bury and perform any funeral or any religious service for

the burial shall forthwith give notice thereof to the registrar: Provided always that the coroner, upon holding any inquest, may order the body to be buried, if he shall think fit, before registry of the death, and shall in such case give a certificate of his order in writing under his hand, according to the form of Schedule (F.) to this Act annexed, to such undertaker or other person having charge of the funeral, which shall be delivered as aforesaid; and every person who shall bury or perform any religious service for the burial of any dead body for which no certificate shall have been duly made and delivered as aforesaid, either by the registrar or coroner, and who shall not within seven days give notice thereof to the registrar, shall forfeit and pay any sum not exceeding ten pounds for every such offence.

SCHEDULE E.

I, *John Cox*, registrar of births and deaths in the district of *Mary-le-bone, North*, in the county of *Middlesex*, do hereby certify that the death of *Henry Hastings* was duly registered by me on the seventh day of *March*, 1836. Witness my hand this *eighth* day of *March*, 1836.

JOHN COX, Registrar.

SCHEDULE F.

I, *James Smith*, coroner for the county of *Dorset*, do hereby order the burial of the body now shown to the inquest jury as the body of *John Jones*. Witness my hand this *eighth* day of *March*, 1836.

JAMES SMITH, Coroner.

The entries in the register of burials will be evidence of the burial only, and not of the time when the death occurred, as to which the 6 & 7 W. 4, c. 86, s. 38 enacts that all certified copies of entries (given in the registrar-general's office) purporting to be sealed or stamped with the seal of the said register office shall be received as evidence of the death to which the same relates, without any further or other proof of such entry; and no certified copy purporting to be given in the said office shall be of any force or effect which is not so sealed or stamped. As to entries in a parish register book of a burial in a workhouse cemetery within the same parish being evidence of the death of the person named, see *Doe on the demises of France and others v. Andrews and others*, 15 A. & Ell. 756.

The registration of burials by ministers of the established church was formerly regulated by the 70th canon. Now it is regulated by the 52 Geo. 3, c. 148, which enacts that registers of public and private burials, according to the rites of the

established church, shall be made and kept by the rector or other officiating minister of every parish or chapelry, on books of parchment or durable paper and in the form fixed by the Act. As soon as possible after every burial the minister is to record in such book the several particulars pointed out to be inserted in the form of the book and sign the same. Unless he is prevented by sickness or unavoidable impediment, this is in no case to be delayed beyond seven days from the date of the burial.

The regulations in the 6 & 7 W. 4, c. 86 as to register books of burials kept by any rector, vicar or curate are as follows (s. 35). Every rector, vicar or curate, and every registrar, registering officer and secretary who shall have the keeping for the time being of any register book of births, deaths or marriages, shall at all reasonable times allow searches to be made of any register book in his keeping, and shall give a copy certified under his hand of any entry or entries in the same on payment of the fee therein-after mentioned: (that is to say,) for every search extending over a period not more than one year the sum of one shilling, and sixpence additional for every additional year, and the sum of two shillings and sixpence for every single certificate. The subsequent Act 3 & 4 Vict. c. 92 also provides that non-parochial registers shall in certain cases be admissible as evidence of burial.

Act, except
ss. 7 and 8,
not to ex-
tend to the
metropolis.

IX. Nothing in this Act, except the provisions in sections seven and eight, shall extend to any parish in "the metropolis," as defined by the said Act of the last session, or otherwise affect the provisions of that Act.

Extent of
Act.

X. This Act shall not extend to Scotland or Ireland.

17 & 18 VICT. CAP. 87.

An Act to make further Provision for the Burial of the Dead in England beyond the limits of the Metropolis. [10th August, 1854.]

16 & 17 Vict.
c. 134.

WHEREAS an Act was passed in the last session of parliament, chapter one hundred and thirty-four, intituled "An Act to amend the Laws concerning the Burial of the Dead in England beyond the

Limits of the Metropolis, and to amend the Act concerning the Burial of the Dead in the Metropolis:" and whereas under the said Act provision is made for providing burial grounds for parishes by burial boards to be appointed by vestries: And whereas in some cases of parishes wholly or partly within boroughs there is difficulty or inconvenience in providing requisite places of burial for the inhabitants under the powers of the said Act, and it is expedient that in such cases such places of burial should be provided by the councils of such boroughs: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

I. In case it appear to Her Majesty in council, upon the petition of the town council of any borough, stating that an order in council has been made for closing all or any of the burial grounds of one or more parishes being wholly or partly within such borough, that there is difficulty or inconvenience in providing, under the powers of the said Act of the last session of parliament, requisite places of burial for the inhabitants of such parish or parishes, it shall be lawful for Her Majesty, with the advice of Her privy council, to order that powers shall be vested in the council of such borough for providing such places of burial under the provisions of this Act: Provided always, that notice of such petition and of the time when it shall please Her Majesty to order that the same be taken into consideration by the privy council shall be published in the *London Gazette*, and in one of the newspapers usually circulating in such borough, one month at least before such petition is so considered.

Her Majesty may, by order in council, invest town councils with the power of providing burial grounds.

As regards the postponement or variation of orders in council made under this Act, see 18 & 19 Vict. c. 128, s. 1.

Upon the making of such order borough council to have all the powers vested in burial boards under 16 & 17 Vict. c. 134.

II. Upon the making of any such order of Her Majesty in council as aforesaid in relation to any borough, if the town council of the same shall decide upon providing one or more burial grounds, the said town council shall be a burial board for that purpose, and the provisions of the said Act of the last session, and the provisions of the Act of the fifteenth and sixteenth years of Her Majesty, chapter eighty-five, in the said Act of the last session mentioned or referred to, and thereby extended and made applicable as therein mentioned, except the provisions relating to the constitution, incorporation, meetings, entries of proceedings, and accounts of burial boards, shall, subject to the provisions herein contained, extend and be applicable to such borough and the council thereof, and to any burial ground and any places for the reception of the bodies of the dead previously to interment which may be provided by such council under this Act in like manner as the same are applicable to any parish and the burial board thereof, and to any burial ground and any such places as aforesaid provided by such burial board, save that no approval, sanction, or authorization of the vestry of any parish shall be requisite.

As regards parishes within the borough which may have already provided burial grounds, see s. 9, *post*.

The matters excepted in this section will be found in the 15 & 16 Vict. c. 85, ss. 10-19, 24.

Expenses to be paid out of borough fund or borough rates.

III. Provided always, that all expenses of carrying this Act into execution in any borough shall, subject to the provisions hereinafter contained, be chargeable upon and paid out of the borough fund and borough rates of such borough, or partly out of such fund and partly out of such rates, in like manner as if the same were expenses incurred in carrying into effect the provisions of an Act of the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six; and any

money to be borrowed under the authority of this Act by the council of such borough, and the interest thereon, shall be charged by such council on the monies out of which such expenses are by this Act directed to be paid, and the said provisions hereby extended and made applicable to the said council shall be construed accordingly; and any surplus of money raised for defraying such expenses as aforesaid, and of the income of any burial ground provided by the council of any borough, which if the same were provided by a burial board for any parish would be applicable in aid of the rate for the relief of the poor of such parish, shall be applicable in aid of the borough fund or borough rates of such borough, or in case a separate rate has been levied in parts only of such borough, for the purposes of this Act, as hereinafter provided, then such surplus shall be applied rateably towards payment or satisfaction of so much of any borough rate as may be leviable in such parts of such borough: Provided always, that such surplus shall be ascertained upon the auditing of the accounts of the treasurer of such borough in the month of September in any year.

The 5 & 6 Will. 4, c. 76, is the Act for the Regulation of Municipal Corporations in England and Wales. As to the publication of the accounts of the council of a borough, see s. 93 of that Act.

The 20 & 21 Vict. c. 81, s. 22, empowers councils of boroughs to make a separate rate for burial expenses.

IV. If any burial board under the said Act of the last session of parliament, or the council of any borough acting under this Act, can at any time borrow at a lower rate of interest than that secured by any mortgage previously made by them, and then outstanding and in force, they may, if they think fit, so borrow accordingly in order to pay off and discharge any security or securities bearing a higher rate of interest, and to secure the repayment

Money may be borrowed at lower rates of interest to pay off securities bearing a higher rate.

of the money so borrowed, and the interest to be paid thereon, in like manner as other monies authorized to be borrowed by such burial board or council under the said Act of the last session or this Act.

See 15 & 16 Vict. c. 85, ss. 20 & 21; and 20 & 21 Vict. c. 81, ss. 18 & 20.

Power to borrow money to pay off former mortgages.

V. If at the time appointed by any mortgage for payment of the principal money secured thereby any such burial board or council as aforesaid are unable to pay off the same, they may, if they think fit, borrow such sum of money as may be necessary for the purpose of paying off all or any part of such principal money, and secure the repayment of the money so borrowed, and the interest to be paid thereon, in like manner as other monies authorized to be borrowed by such burial board or council under the said Act of the last session or this Act.

See 20 & 21 Vict. c. 81, s. 18.

Council how to act under this Act, and conveyances and sales of lands how to be made.

VI. The council of any borough shall act in execution and exercise of their duties, powers, and authorities under this Act in like manner as in execution and exercise of their duties, powers, and authorities under the said Act of the fifth and sixth years of King William the Fourth; and every conveyance of lands to be purchased for the purposes of this Act shall be taken in the name of the body corporate of such borough, and such body corporate shall have power to hold such lands for the purposes of this Act; and no lands purchased under this Act by the council of any borough shall be sold, except with the like approbation and subject to the like restrictions as if sold under the said Act of the fifth and sixth years of King William the Fourth;

and the signature of any member or members of such council shall not be necessary to any conveyance of any lands so sold; and a receipt under the hand of the treasurer of such borough shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

See 5 & 6 Will. 4, c. 76, ss. 58, 59, 60, 65, 69, 70, as to the execution of the duties of town councillors, and s. 94 as to the sale or alienation of lands by the council of any borough.

VII. The burial ground or burial grounds provided for any borough under this Act shall be deemed to be provided for such parish or parishes wholly or in part situate in such borough as the town council shall determine.

Burial ground to be deemed to be for the parishes in the borough.

See 15 & 16 Vict. c. 85, s. 32, on this point.

VIII. It shall be lawful for the council of any borough, if they see fit, in fixing and settling, revising and altering the fees, payments, and sums mentioned in section thirty-four of the said Act of the fifteenth and sixteenth years of Her Majesty, from time to time to fix all or any of such fees, payments, and sums in respect of interments of the remains of persons being inhabitants of that part of any parish partly within and partly without the limits of such borough which is without such limits, and in respect of other rights to be exercised with reference to the interment of the remains of such persons at a higher amount than the ordinary charge for the time being fixed by such council in respect of the like matters; provided always, that such higher amount shall be fixed with the approval of one of Her Majesty's principal secretaries of state.

Council may fix a higher rate of payment for interment, &c. in respect of out-lying part of any parish partly situate in the borough.

IX. Where, previously to the making of any Order in

council may except parishes already having burial grounds; and in such case, if a rate be necessary, a separate rate to be made on the rest of the borough.

order in council under this Act in relation to any borough, it appears to Her Majesty in council, upon the petition of the town council so made as aforesaid, or otherwise, that any parish wholly or in part within such borough is provided with a sufficient burial ground, it shall be lawful for Her Majesty in and by such order to direct that no part of such parish shall be assessed towards defraying the expenses of executing this Act in such borough, and in such case no burial ground provided for such borough under this Act shall be deemed to be provided for such parish; and any money required to be raised in such borough for defraying such expenses, or paying any money borrowed under this Act by the council of such borough, or any interest thereon, by means of a rate to be levied in such borough, shall be raised by a separate rate, to be levied within such parts of such borough as are not exempted under such order from being assessed as aforesaid; and (so far as may be consistent with this provision) the council of such borough shall have all such powers for making and levying such rate, and all provisions shall be applicable in respect thereof, as in the case of a borough rate made under the said Act of the fifth and sixth years of King William the Fourth.

With respect to the making and levying of a borough rate, see 5 & 6 Will. 4, c. 76, s. 92.

Powers of vestry, with consent of bishop, of fixing and revising the fees payable to incumbent, &c. transferred to the borough council.

X. The powers of settling and fixing the fees or sums to be payable to the incumbent or minister, and of revising and varying the fees payable to the incumbent, clerk, and sexton, and other persons and bodies, and of substituting for such fees fixed annual sums, by sections thirty-three and thirty-seven of the said Act of the fifteenth and sixteenth years of Her Majesty given to the vestry, and exercisable with the approval or consent of the bishop of the diocese, as therein mentioned, shall, with respect to

fees and sums arising in or from any burial ground provided under this Act by the council of any borough, be transferred to such council, and be exercisable with the like approval or consent.

See 18 & 19 Vict. c. 128, s. 7, which makes the approval of the secretary of state necessary; and also the 20 & 21 Vict. c. 81, s. 17, which requires that the fees for burials in the consecrated and unconsecrated portions of the burial ground shall be identical in amount.

XI. It shall be lawful for the council of any borough to appropriate for the purposes of this Act any land belonging to the body corporate of such borough, or vested in any feoffees, trustees, or others, for the general benefit of the borough, or for any specific charity; provided always, that where any land so appropriated shall be subject to any charitable use, such land shall be taken on such conditions only as the court of chancery, in the exercise of its jurisdiction over charitable trusts, shall appoint and direct.

Council may appropriate land belonging to the borough.

XII. So much of the said Act of the fifteenth and sixteenth years of Her Majesty as enacts, that "no ground (not already used as or appropriated for a cemetery) shall be appropriated as a burial ground or as an addition to a burial ground under that Act nearer than two hundred yards to any dwelling-house, without the consent in writing of the owner, lessee, and occupier of such dwelling-house," shall not extend or be applicable to or in respect of any burial grounds which have been or may be provided under the said Act of the last session and this Act, or either of them, or to or in respect of any addition which has been or may be so provided to any burial ground; but no ground not already used as or appropriated for a cemetery shall be appropriated under the said Act of the last session and this Act, or either of them, as a burial ground, or as an addition to a burial ground, nearer

Burial ground not to be within 100 yards of a dwelling-house.

than one hundred yards to any dwelling-house, without such consent as aforesaid.

See 15 & 16 Vict. c. 85, s. 25; 18 & 19 Vict. c. 128, s. 9; and 20 & 21 Vict. c. 81, s. 6, and notes thereon.

18 & 19 VICT. CAP. 128.

An Act further to amend the Laws concerning the Burial of the Dead in England.

[14th August, 1855.]

15 & 16 Vict.
c. 85.

16 & 17 Vict.
c. 134.

17 & 18 Vict.
c. 87.

WHEREAS an Act was passed in the session of parliament holden in the fifteenth and sixteenth years of Her Majesty (chapter eighty-five) "to amend the Laws concerning the Burial of the Dead in the Metropolis;" and an Act was passed in the session of parliament holden in the sixteenth and seventeenth years of Her Majesty (chapter one hundred and thirty-four), "to amend the Laws concerning the Burial of the Dead in England beyond the Limits of the Metropolis, and to amend the Act concerning the Burial of the Dead in the Metropolis;" and an Act was passed in the last session of parliament (chapter eighty-seven), "to make further provisions for the Burial of the Dead in England beyond the Limits of the Metropolis:" And whereas it is expedient that further provision should be made for the burial of the dead, and that the said Acts should be amended: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :

Orders in
council
under the
recited
Acts may be

I. It shall be lawful for Her Majesty, by and with the advice of her privy council, from time to time to postpone the time appointed by any order in

council for the discontinuance of burials, or otherwise to vary any order in council made under any of the said recited Acts or this Act, (whether the time thereby appointed for the discontinuance of burials thereunder or other operation of such order shall or shall not have arrived,) as to Her Majesty, with such advice as aforesaid, may seem fit; and every order of Her Majesty in council made before the passing of this Act for varying any order previously made under the said Acts or any of them shall be deemed valid and effectual in law.

varied by
like orders.

See 15 & 16 Vict. c. 85, s. 2; 16 & 17 Vict. c. 134, s. 1; and 17 & 18 Vict. c. 87, s. 1.

II. If any person, after the time mentioned in any order in council under the said Acts or any of them, or this Act, for the discontinuance of burials, shall knowingly and wilfully bury any body or in anywise act or assist in the burial of any body in any church, chapel, churchyard, burial ground, or place of burial or (as the case may be) within the limits in which burials have by such orders been ordered to be discontinued, in violation of the provisions of any such order, every person so offending shall, upon summary conviction before two justices of the peace, forfeit a sum not exceeding ten pounds.

Penalty on
persons
burying con-
trary to the
provisions of
orders in
council.

The 16 & 17 Vict. c. 134, s. 3, makes it a misdemeanor to bury any body, or in anywise to act or assist in the burial of any body contrary to that Act. See also s. 8, as to obstructing inspectors or violating regulations; *R. v. Maude and another*, *J.J. of Manchester*, 25 L. J. R. n. s., Q. B. 45, p. 84, *ante*; and note to 16 & 17 Vict. c. 134, s. 5.

III. The churchwardens or other persons to whom it belongs to convene meetings of the vestry of any parish in which no burial board has been appointed may, at any time, at their discretion, without requisition of ratepayers for that purpose, convene a meeting of such vestry for the purpose of determining whether a burial ground shall be pro-

Power to
church-
wardens to
call vestry
meetings
for provid-
ing burial
grounds.

Where order in council has been made, or notice given to apply to the privy council for closing burial grounds, churchwardens shall call a meeting of vestry.

vided for the parish ; and where any order in council has been made before the passing of this Act for discontinuing burials (wholly or subject to any exception or qualification) in any burial ground of any parish for which no burial board has been appointed, or notice has been given of the intention of the secretary of state to make a representation to Her Majesty in council that burials should be discontinued (wholly or subject to any exception or qualification) in any burial ground of any parish, the churchwardens or other persons to whom it belongs to convene meetings of vestry shall, with all convenient speed after the passing of this Act, convene a meeting of the vestry for the purpose aforesaid ; and where at any time hereafter notice is given of the intention of the secretary of state to make a like representation in relation to a burial ground of any parish, such churchwardens or other persons as aforesaid shall forthwith convene a meeting of the vestry for the purpose aforesaid ; and all the provisions of the said Acts as amended by this Act relating to and consequent upon vestry meetings convened upon such requisition as provided by the first-recited Act shall be applicable to vestry meetings convened under this enactment.

See 15 & 16 Vict. c. 85, s. 10, as to requisitions of ratepayers to the churchwardens to convene vestry meeting for the purpose of determining whether a burial ground shall be provided for the parish ; and 20 & 21 Vict. c. 81, s. 4, as to places under local boards of health or improvement commissioners, who may, by order in council, be constituted the burial boards for such places.

Vacancies in burial board to be filled up by vestry within a month.

IV. Every vacancy in any burial board shall be filled up by the vestry appointing the same within one month after such vacancy shall have happened, and immediately on the occurrence thereof the same shall be notified by the burial board to the churchwardens or other persons to whom it belongs to convene meetings of the vestry ; and in case any

such vestry shall neglect to fill up any such vacancy, the vacancy may be filled up by the burial board at any meeting thereof; and every person to be appointed to supply any such vacancy shall be a ratepayer of the parish for which the burial board is appointed; and every such board may act for any purpose, notwithstanding any vacancies therein.

The 15 & 16 Vict. c. 85, s. 12, enacted that vacancies in the burial board might be filled up by the vestry, when and as the vestry thought fit; under this Act the vacancy must be filled up within one month after its occurrence. Only rate-payers can be appointed to fill up vacancies under this section, which therefore seems to conflict with the 15 & 16 Vict. c. 85, s. 11, which makes the incumbent of the parish eligible to be appointed and re-appointed a member of the burial board, though he be not a ratepayer. The section requires that on the occurrence of every vacancy the same shall be immediately notified by the burial board to the churchwardens or other persons to whom it belongs to convene meetings of the vestry. In the case of a vacancy arising from a resignation it may be remarked that by the 15 & 16 Vict. c. 85, s. 11, resignations are effected by notice in writing to the churchwardens, and that the fact of a vacancy occasioned by a resignation cannot therefore be known to the burial board until it is communicated to them by the churchwardens; who are then to be notified of the fact which they themselves had made known to the burial board! However, the omission of such notification will not affect the power of the vestry, or of the burial board, to fill up vacancies; and the right of the vestry to appoint is not limited to the month, for the Act is only directory in that respect.

V. So much of section thirteen of the said Act of the fifteenth and sixteenth years of Her Majesty as requires that the burial board shall meet once at least in every month shall be repealed.

Monthly meetings of boards repealed.

VI. If the vestry of any parish shall refuse or neglect to authorize the expenditure of such sums as the burial board of such parish shall have declared to be necessary for providing and laying out a burial ground, and building the necessary chapel or chapels therein, it shall be lawful for such burial board to represent such refusal or neglect to one of

Sanction of vestry not required for expenditure and other acts of burial board in certain cases.

Her Majesty's principal secretaries of state ; and in case it shall appear to the secretary of state, after inquiry into the circumstances of the case, that the burial board are unable to provide such burial ground, or to proceed effectually in the execution of their duties, by reason of such refusal or neglect, it shall be lawful for such secretary of state, by warrant under his hand, to authorize such burial board, without further authority, sanction, or approval of or by such vestry, to expend such sums of money for providing and laying out a burial ground, and building the necessary chapel or chapels thereon, and to borrow and charge such money for all or any of such purposes, and to enter into and make such contracts and purchases, and do such other Acts as under the sections nineteen, twenty, twenty-six, and forty-two of the said Act of the fifteenth and sixteenth years of Her Majesty might have been expended, borrowed, and charged, entered into, made, and done with the authority, approval, and sanction of such vestry, subject, nevertheless, to such limitation of amount or other limitation or restriction as such secretary of state may by his warrant prescribe ; and all Acts done in pursuance of such warrant shall be as valid and effectual as if the authority, approval, and sanction of such vestry had in every case been obtained.

It may well be asked with reference to the first part of this section whether, but for the enactment, it would have been *unlawful* for the burial board to have represented the refusal or neglect of the vestry to one of Her Majesty's principal secretaries of state.

Fees, &c. to be subject to the approval of secretary of state.

VII. All such fees, payments, and sums as may be fixed, settled, and received by any burial board under section thirty-four of the said Act of the fifteenth and sixteenth years of Her Majesty, shall be so fixed and settled subject to the approval of one of Her Majesty's principal secretaries of state ;

and no such fees, payments or sums shall be altered or varied without such approval.

The fees for burials in the consecrated and unconsecrated portions of the burial grounds must be identical in amount. See 20 & 21 Vict. c. 81, s. 17, and note thereon.

VIII. It shall be lawful for one of Her Majesty's principal secretaries of state from time to time to appoint and authorize any person to inspect any burial ground or cemetery, parochial or non-parochial, or place for the reception of bodies, to ascertain the state and condition thereof, and where regulations in relation thereto have been made or may be made by the secretary of state under the said Acts or any of them, to ascertain whether such regulations have been observed and complied with; and if any person having the care of any such burial ground or cemetery or other place, shall obstruct any person so authorized to inspect the same, or if any person having the care of any burial ground or place for the reception of bodies subject to such regulations as aforesaid shall violate or neglect or fail to observe or comply with any such regulation, or any regulation imposed by this Act, every person so offending shall upon summary conviction thereof before two justices forfeit and pay a sum not exceeding ten pounds.

Secretary of state may direct inspection of burial grounds.

Penalty for obstructing inspector or violating regulations.

See 15 & 16 Vict. c. 85, s. 44, as to the power of the secretary of state to make regulations as to burial grounds, &c.

IX. So much of the said Act of the fifteenth and sixteenth years of Her Majesty as enacts that "no ground (not already used as or appropriated for a cemetery) shall be appropriated as a burial ground or as an addition to a burial ground under that Act nearer than two hundred yards to any dwelling house, without the consent in writing of the owner, lessee, and occupier of such dwelling house," shall be repealed; but no ground not already used as

Part of section 24 of 15 & 16 Vict. c. 85, repealed.

Burial ground not to be within 100 yards of a dwelling-house.

or appropriated for a cemetery shall be used for burials under the said Act or this Act, or either of them, within the distance of one hundred yards from any dwelling house, without such consent as aforesaid.

The limitation as to distance in this section only applies to burial grounds provided under the Burial Acts and not to other grounds. With regard to burial grounds for work-houses, see 20 & 21 Vict. c. 81, s. 6, and note thereon.

See also 15 & 16 Vict. c. 85, s. 25; and 17 & 18 Vict. c. 87, s. 12.

If rate-payers resolve, land for new burial ground may be conveyed and settled as old burial ground.

X. If the ratepayers assembled at any vestry duly convened under the provisions of this Act shall, in pursuance of public notice duly given in that behalf, resolve unanimously that any new burial ground to be provided for their parish, under the provisions of this Act, shall be held and used in like manner and subject to the same laws and regulations in all respects as the existing burial ground or churchyard of the said parish, the land for such new burial ground may be conveyed and settled in accordance with such resolution, anything in this or the said recited Acts notwithstanding, and in such case it shall not be necessary to set apart to remain unconsecrated any portion of the land so conveyed and settled: Provided always, that if at any time within ten years thereafter the vestry, duly convened under the provisions of this Act in pursuance of public notice duly given in that behalf, should determine that an unconsecrated burial ground should be also provided for such parish, all the powers and provisions of the said recited Acts and this Act may be put in force and shall be applicable for providing such unconsecrated burial ground separately, in like manner as they might have been put in force and been applicable for providing an ordinary burial ground for such parish.

See 15 & 16 Vict. c. 85, s. 25; 16 & 17 Vict. c. 134, s. 7. Note the limitation of time within which under this section an unconsecrated burial ground may be provided for the parish.

XI. Where a parish or place has been united with any other parish or place, parishes or places, for all or any ecclesiastical purposes, or where two or more parishes or places have heretofore had a church or a burial ground for their joint use, or where the inhabitants of several parishes or places have been accustomed to meet in one vestry for purposes common to such several parishes or places, it shall be lawful for the vestry or any meeting in the nature of a vestry of such several parishes or places in any of the cases aforesaid, and whether any one or more of such parishes or places do or do not separately maintain its own poor, to appoint a burial board, and from time to time to supply vacancies therein, and to exercise the same powers of authorization, approval, and sanction in relation to such burial board, and such other powers as under the said Acts and this Act are vested in the vestry of a parish or place separately maintaining its own poor; and the burial board so appointed shall have all the powers for providing a burial ground for the common use of such several parishes or places, and for facilitating interments, and otherwise, as if such several parishes or places had been a parish separately maintaining its own poor; and the expenses of the burial board appointed under this provision shall be borne by the several parishes or places for which such board is appointed, and shall be apportioned among them by such burial board in proportion to the value of the property in such several parishes or places as rated to the relief of the poor; and the sums required by the burial board in respect of the portion of such expenses to be borne by any such parish or place shall be paid out of the rates for the relief of the poor in such parish or place, in like manner as if such burial board had been appointed for such parish or place alone.

How burial grounds are to be provided for united parishes.

The 20 & 21 Vict. c. 81, s. 9, makes it unlawful for the vestry of the several parishes to appoint under this enactment a burial board, without the approval of the secretary of state.

See also 15 & 16 Vict. c. 85, s. 23, and 20 & 21 Vict. c. 81, s. 9. Under this section, the expenses incurred are to be borne by the several parishes or places for which the board is appointed, and to be apportioned among them "in proportion to the value of the property in such several parishes or places as rated to the relief of the poor." In all such cases it will, therefore, be necessary, in order to prevent injustice and an undue burden being thrown upon any one parish, that the valuation of the property in the respective parishes should be made upon the same basis or principle, as explained by the 6 & 7 W. 4, c. 96, s. 1; that is to say, "the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants rates and taxes, and tithe commutation rent charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent.

As to the approval of such vestries of acts to be done by the burial board, see the 20 & 21 Vict. c. 81, s. 1. If the district or place be under a local board of health or improvement commissioners, they may by order in council be constituted the burial board. *Ib.* s. 4.

Burial boards may be appointed for township, &c. (not separately maintaining their own poor) which have had separate burial grounds.

XII. The vestry or meeting in the nature of a vestry of any parish, township, or other district not separately maintaining its own poor, which has heretofore had a separate burial ground, may appoint a burial board, and from time to time supply vacancies therein, and may exercise the same powers of authorization, approval, and sanction in relation to such burial board, and such other powers as under the said Acts and this Act are vested in the vestry of a parish separately maintaining its own poor; and the burial board so appointed shall have all the powers for providing a burial ground and otherwise as if such parish, township, or other district had been a parish separately maintaining its own poor.

See 15 & 16 Vict. c. 85, s. 23; and as to the approval of such vestries of acts to be done by the burial board, see the 20 & 21 Vict. c. 81, s. 1.

Provision for expenses of burial boards of places not

XIII. Where any district (whether a parish or township or other subdivision) not separately maintaining its own poor, but forming part of a parish

maintaining its own poor, or of an incorporation or other union maintaining the poor of the places comprised therein, by means of a common rate, shall have a burial board, or shall form part of a place or union of places not co-extensive with the area rated for the relief of the poor, and having one burial board, it shall be lawful for such respective burial board to issue their certificate to the overseers of such parish, or the overseers or other persons authorized to make and collect or cause to be collected such common rate (as the case may be), for payment of the sums required for the expenses of such burial board, or, where such district not separately maintaining its own poor forms part only of the area of the burial board, of the sums required in respect of the portion of such expenses to be borne by such district, in like manner as if such district had been a parish separately maintaining its own poor, and such overseers or persons authorized as aforesaid had been the overseers thereof; and such overseers or persons shall pay such sums as shall be required by such certificate, according to the directions of such burial board, and shall levy such sums as may be required for such payments to the burial board by an addition to the parish rate or common rate, so far as the same affects the district in respect of which such payments are required, or by separate rates to be made from time to time on such district; and for levying such additions or separate rates as aforesaid such overseers or other persons shall have the powers, remedies, and privileges, and proceed in the same manner, as in the case of the rates for the relief of the poor; provided that any such rates may (notwithstanding any restriction in relation to the parish rate or common rate) be made and levied at such times as may be necessary to provide for the payments aforesaid.

separately
maintaining
their own
poor.

Further provision, with respect to the providing of burial grounds for places not separately maintaining their own poor, is made by the 20 & 21 Vict. c. 81, s. 5.

No obligation to build a chapel for persons not members of the church of England when secretary of state, upon representation of three-fourths of vestry, declares it unnecessary.

XIV. And whereas doubts have arisen whether in all cases in which any burial board shall build in any burial ground provided by such board a chapel for the burial service according to the rites of the United Church of England and Ireland, such burial board is not also bound by law to build a chapel or chapels upon the unconsecrated part of such burial ground for the performance of burial service for persons not being members of the said church: Be it enacted, that in any such case as aforesaid, where it shall appear to one of Her Majesty's principal secretaries of state, upon the representation of a majority of the vestry of any parish, consisting of not less than three-fourths of the members of the same, that the building of a chapel upon the unconsecrated part of any such burial ground for the use of persons not being members of the said church is undesirable and unnecessary, it shall be lawful for the said secretary of state, if he shall think fit, to signify his opinion to that effect to the burial board of the parish, and the said burial board shall thereupon be relieved from all obligation to build the same: Provided always, that such secretary of state shall not signify his opinion as aforesaid unless it be shown to his satisfaction that notice of the intention to propose to such vestry to make such representation was given in manner required by law for notices of vestry meetings, and of the special purposes thereof.

See 15 & 16 Vict. c. 85, s. 30; 16 & 17 Vict. c. 134, s. 7; and s. 16, *post*.

See 20 & 21 Vict. c. 81, s. 11, as to the division or boundary marks between the consecrated and the unconsecrated portions of burial grounds, and also ss. 12 & 13, as to burying in the ground in certain cases before consecration.

Assessment to local rates not to be increased after purchases for the purposes of this

XV. No land already or to be hereafter purchased or acquired under the provisions of any of the Acts herein-before recited, for the purpose of a burial ground (with or without any building erected or to be erected thereon), shall while used for such pur-

poses be assessed to any county, parochial, or other local rates at a higher value or more improved rent than the value or rent at which the same was assessed at the time of such purchase or acquisition.

XVI. That in any case where the burial boards appointed under the said recited Acts of the fifteenth and sixteenth and the sixteenth and seventeenth years of Her Majesty, or either of them, for any two parishes, shall provide separate burial grounds for such parishes respectively, and such burial grounds shall adjoin each other, it shall be lawful for the said burial boards to concur in building, either on one of the said burial grounds or partly on one of such grounds and partly on the other, such chapels as are authorized to be built by the said Acts, and that such chapels when erected shall be used in common by both of such parishes, and be deemed and taken to be the chapels of and belonging to each of such burial grounds respectively, in such manner, consistent with the provisions of the said Acts or either of them, as the said burial boards shall mutually agree upon; and that the said burial boards may agree as to the proportions in which the expenses of erecting such chapel accommodation shall be borne by each of the said boards respectively; and the proportion for each of such parishes of such expenses shall be chargeable upon and paid in the same manner as the costs of providing burial grounds under the said Acts; and where any burial board shall provide a burial ground, and cause chapels to be built thereon, pursuant to the said recited Acts, it shall be lawful for such burial board, with the sanction of one of Her Majesty's principal secretaries of state, to contract with any other burial board whose burial ground shall adjoin the one on which such chapels shall so have been built, for the use of such chapels, in such manner and on such terms as such respective burial boards shall mutually agree,

or any former Act.

Separate burial boards whose burial grounds adjoin may contract with each other for specific purposes

and that during the existence of any such agreement such chapels shall be deemed and taken to be the chapels of and belonging to each of such burial grounds respectively.

See 15 & 16 Vict. c. 85, s. 30.

Burial board
may let land
not required
for burials.

XVII. It shall be lawful for any burial board, with the sanction of one of Her Majesty's principal secretaries of state, and subject to regulations approved of by him, to let any land purchased by and vested in them under this Act or any of the Acts herein-before recited, and which has not been consecrated, and in which no body has been at any time interred, and which is not for the time being required for the purposes of a burial ground, in such manner and on such terms as such board may see fit, but so nevertheless that power shall be reserved to such board to resume any such land which may be required for the purposes aforesaid, upon giving six months notice.

Burial board
to keep in
order closed
burial
grounds, &c.

XVIII. In every case in which any order in council has been or shall hereafter be issued for the discontinuance of burials in any churchyard or burial ground, the burial board or churchwardens, as the case may be, shall maintain such churchyard or burial ground of any parish in decent order, and also do the necessary repair of the walls and other fences thereof, and the costs and expenses shall be repaid by the overseers, upon the certificate of the burial board or churchwardens, as the case may be, out of the rate made for the relief of the poor of the parish or place in which such churchyard or burial ground is situate, unless there shall be some other fund legally chargeable with such costs and expenses.

This enactment continues upon the parishioners the obligation of defraying the cost of repairs to the fence of the churchyard which has been closed. The clause is not skilfully drawn, and the true meaning of it seems to be open to much question. In Burn's Ecclesiastical Law it is said, that by a constitution of Archbishop Winchelsea

the parishioners shall repair the fence of the churchyard at their own charge (1 *Burn's Ecc. Law*, p. 345). Lord Coke says, that the parishioners ought to repair the inclosure to the churchyard, because the bodies of the more common sort are buried there, and for the preservation of the burials of those that were or should have been, while they lived, the temples of the Holy Ghost (2 *Inst.* 489). And if the churchyard be not decently inclosed, the church, which is God's house, cannot decently be kept; and therefore, this the parishioners ought to do, by custom known and approved (*ib.*); and the 85th canon requires that the churchwardens or quest-men shall take care that the churchyards be well and sufficiently repaired, fenced, and maintained with walls, rails, or pales, as have been in each place accustomed, at their charges unto whom by law the same appertaineth.

Concerning the churchyard, which is "the soil of the church," and the right of the minister to the trees growing upon it, the following translation from Rastall's English Collection of Statutes, published in 1603, of the statute 35 Edward I, may be here quoted: "Forasmuch as we have understood very often that contention hath arisen between parsons of churches and their parishioners touching trees that grow in the churchyard, both of them affirming that they belong to themselves: we have thought good to declare the doubt of such contention [by law of writing*] rather than by law of statute: For whereas the churchyard, especially that which is dedicated, is the soil of the church, and whatsoever is planted upon the soil belongeth to the soil, it followeth necessarily that the trees themselves ought to be numbered amongst the church goods, the disposing whereof is not given to laymen, but, as the Holy Scripture witnesseth, the care of disposing of them being undiscussed by God, ought to be committed unto priests only: but, forasmuch as those trees oftentimes are planted to keep away the force of the wind from hurting of the churches, we will that parsons of churches do not presume to fell those trees indiscreetly, but only when the chancel of the church doth want necessary reparations: nor shall convert them to any other use by any other means, unless the body of the church do likewise want reparations, and the parsons do of charity think good to give those trees to the parishioners wanting them: which we do not command to be done, but when it is done we do commend it."

Where it is a churchyard that has been closed, the churchwardens will be the proper authority to keep the closed churchyard in decent order, and the walls and fences of it in repair. On the other hand, a closed burial ground will be kept in order, and the walls and fences in repair by the burial board if

* By the sacred law.

there be one. If however there be no burial board, then the duty of so doing will devolve upon the churchwardens, as in the case of a churchyard. Some difficulty may arise with regard to the re-payment to the burial board or the churchwardens, as the case may be, of the costs which they may incur under this section. In the case of a burial board it would seem that the costs are not to be defrayed out of their general fund (see 15 & 16 Vict. c. 85, s. 19), but that separate requisitions or certificates must, whenever any costs have been incurred, be made and the particular amount be repaid by the overseers out of the poor rates, "unless there shall be some other fund legally chargeable with such costs and expenses." What "fund" was intended to be referred to is not very obvious; the church-rate is not a "fund," though a "fund" may be raised by means of a church-rate. In the case of a churchyard it has been shown that by the common law, the parishioners are bound to keep the churchyard decently inclosed and in decent order. The churchwardens, as the guardians and keepers of the church, and as representing the parishioners, are bound to effect this by means of a church-rate to be levied upon the parishioners. See *Walton v. Montague and Lamprell*, 1 Curt. 253; *Nunn v. Varty and Mopsey*, 3 Curt. 352; and if any such rate has been granted by the vestry, that rate and not the poor rate would seem to be the proper "fund" to go upon. If, however, the vestry have refused a church-rate, then as there will be no "fund" actually in existence which is legally chargeable with the costs which are now under consideration, the overseers would have to defray them out of the poor rate (fund), upon a certificate of the churchwardens. But not if the owners of any lands adjoining the churchyard have used time out of mind to repair so much of the walls or fence thereof as adjoins the lands. Such custom is a good custom, and the churchwardens have an action against them at the common law for the same. 1 *Burn's Ecc. Law*, p. 345.

The churchwardens or burial board, as the case may be, are to maintain the churchyard or burial ground in decent order, and to do the necessary repair of the walls and other fences; they cannot interfere in any way with the grave stones or tombs, unless they be in such a state that the ground cannot otherwise be put in "decent order."

Act not to
abridge
powers of
local boards
of health,
&c.

XIX. Nothing in this Act contained shall in anywise abridge, lessen, or defeat any power, right, or privilege of any local board of health being the burial board of a borough created or to exist under or by virtue of any local Act of parliament.

XX. Any local board of health acting as or created a board under or by virtue of the powers of any local Act of parliament shall and may have and exercise all the powers, rights, and privileges which by this Act or by the secondly recited Act are or can or may be had, enjoyed, or exercised by any burial board therein named.

Local boards of health to exercise powers of this Act.

By 20 & 21 Vict. c. 81, s. 4, local boards of health may by order in council be constituted burial boards.

XXI. The said Acts of the fifteenth and sixteenth, sixteenth and seventeenth, and seventeenth and eighteenth years of Her Majesty and this Act shall be read and construed together as one Act.

Acts to be construed together.

20 & 21 VICT. CAP. 35.

An Act to amend an Act passed in the fifteenth and sixteenth years of the reign of Her present Majesty Queen Victoria, intituled An Act to amend the Laws concerning the Burial of the Dead in the Metropolis, so far as relates to the City of London and the Liberties thereof.

[10th August, 1857.]

WHEREAS an Act was passed in the session of parliament holden in the fifteenth and sixteenth years of the reign of Her present Majesty Queen Victoria, intituled "An Act to amend the Laws concerning the Burial of the Dead in the Metropolis," containing provisions for the appointment of burial boards in the several parishes in the metropolis, and conferring on such burial boards various powers and authorities to be exercised in some cases by the board alone, and in other cases by the boards

15 & 16 Vict. c. 85.

with the approval of the vestries of their respective parishes: and whereas it was by the said Act enacted, that the provisions therein contained for the appointment of burial boards should not apply to any parish within the limits of the City of London, and the liberties thereof, but it should be lawful for the mayor, aldermen, and commons of the City of London, in common council assembled, if and when they should see fit so to do, to authorize and direct the commissioners of sewers of the City of London to exercise for the said City and liberties all the powers and authorities vested in the burial boards under the said Act; and thereupon such commissioners should have and exercise for and on behalf of the said city and liberties all such powers and authorities as were thereby vested in the burial board for any parish, or which might be exercised by such board with the approval of the vestry: and whereas the commissioners of sewers of the City of London have been authorized by the said mayor, aldermen, and commons, in common council assembled, to exercise the powers and authorities vested in the burial boards under the said Act, and have provided and constructed a large and spacious cemetery in the parish of Little Ilford in the county of Essex at an expense of seventy-five thousand pounds: And whereas there are more than one hundred parishes within the city of London and the liberties thereof, and it has been found impracticable to obtain the requisite consents of all the vestries of such parishes to the uniform exercise of such powers or authorities by the said commissioners: And whereas under the provisions contained in the thirty-seventh section of the said Act (by which section power is given to the vestry of any parish, with consent of the bishop of the diocese, to revise and vary the fees payable to the incumbent under the provisions of the said Act,) a table of fees to be paid to incumbents upon interments which shall

take place in the consecrated portion of the said cemetery at Little Ilford has been agreed to by the major part in number of the vestries of the parishes within the city of London and the liberties thereof, which table of fees has been approved of by the bishop of the diocese and is contained in the Schedule to this Act: And whereas it is expedient that the table of fees so agreed to should be made to apply to the whole of the parishes within the city of London and the liberties thereof, and that the said Act should be amended by making the consent or approval of the major part in number of the vestries of the several parishes within the city of London and the liberties thereof sufficient to enable the commissioners of sewers of the city of London to exercise any power or authority conferred upon them by the said Act, which requires for the exercise thereof the approval or consent of all the vestries of such parishes; and also that the said Act should be amended in manner herein-after mentioned: And whereas the purposes aforesaid cannot be effected without the authority of parliament: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

I. The fees enumerated in the Schedule to this Act shall be the fees which the incumbents of the parishes within the city of London and the liberties thereof shall be entitled to receive upon all interments in the consecrated portion of the said cemetery at Little Ilford, whether of the remains of parishioners or inhabitants of the said parishes, or of any other persons, and the same fees shall be in satisfaction of all claims on the part of such incumbents to fees of every description, whether in respect of burial in vaults or graves, or of the erection of

The fees in Schedule to be the fees payable to incumbents.

monuments, gravestones, or tablets, or of monumental inscriptions in the said cemetery.

As to the meaning of the words "parishioner," and "inhabitant," see the interpretation clause, s. 8, *post*.

The fees payable under this section will not be paid direct to the incumbents, but in the manner provided for in s. 5, *post*. See also note to 15 & 16 Vict. c. 85, s. 33, p. 58, as to the collection of fees due to incumbents.

The Tower of London, which is extra-parochial, contains an ancient burial ground and also an additional burial ground which the 51 Geo. 3, c. 118, enabled the King to grant to be used as an additional burial ground for persons dying within the tower, which after consecration "shall and may for ever be used as and for a burial ground for the interment of persons dying within the said Tower" (s. 2).

Approval of
a majority
of vestries in
the city of
London to
be sufficient.

II. When and as often as the consent or approval of the vestries of the several parishes within the limits of the city of London and the liberties thereof is by the said recited Act required for the purpose of enabling the commissioners of sewers of the city of London to exercise any power or authority given to or vested in them by the said Act, or to execute any act, deed, matter, or thing under the authority of the said Act, or to confirm or render valid any act, deed, matter, or thing made or done, or agreed or proposed to be made or done, by the said commissioners, then and in every case the consent or approval of the major part in number of the vestries of the several parishes within the said city and liberties shall be sufficient to enable the said commissioners to exercise any such power or authority, or to do or execute any such act, deed, matter, or thing as aforesaid, and to confirm and render valid any act, deed, matter, or thing made or done, or agreed or proposed to be made or done, by them, and shall be as valid and effectual for all the purposes of the said Act as if all the vestries of the said parishes within the city of London and the liberties thereof had actually consented to or approved thereof, or had confirmed the same: Provided, that the parishes united under the provisions of the Act

of the twenty-second year of Charles Second, chapter eleven, or united for ecclesiastical purposes by the provisions of that, or any other Act or Acts, shall, for the purposes of this Act and the said recited Act, be and be deemed one parish.

The matters in regard to which the consent or approval of vestries is required by the 15 & 16 Vict. c. 85, will be found in ss. 10, 11, 12, 19, 20, 23, 26, 28, 29, 37 & 42, of that Act.

III. The provisions in the said recited Act contained with reference to fees payable to incumbents, churchwardens, and others for parochial or other purposes, and also with reference to the powers given to vestries of revising and varying, with the consent of the bishop, the fees payable to incumbents, clerks, and sextons, or of substituting fixed payments in lieu thereof, which provisions are comprised in the thirty-second, thirty-third, thirty-fifth, thirty-sixth, thirty-seventh, and fiftieth sections of the said Act, shall not apply to parishes situated within the City of London or the liberties thereof.

Certain sections in recited Act repealed as to the city of London.

IV. It shall be lawful for the commissioners of sewers of the city of London, acting as burial board for the several parishes within the city and the liberties thereof, with the approval of the major part in number of the vestries of such parishes, to settle and determine whether any and what fees shall be payable to the churchwardens or to the clerk or sexton of any parish within the city of London or the liberties thereof, or to any trustees or other persons for any parochial or other purpose whatever, on any interment, or for any monument, gravestone, tablet, or monumental inscription in any burial ground already provided or which may hereafter be provided by the said commissioners in pursuance of the powers contained in the said Act, and such fees (if any) as shall be so settled and determined shall

Commissioners, acting as burial board, with the approval of the major part of the vestries, to settle fees payable to churchwardens, &c.

be paid to the commissioners, and shall be paid over by them to the parties for the time being entitled to receive the same.

This section is in substitution of s. 36 of the 15 & 16 Vict. c. 85, repealed by s. 3 of this Act.

Fees to be paid by the commissioners.

V. All fees payable under the provisions of this Act to incumbents of parishes within the city of London and the liberties thereof shall be paid by the commissioners of sewers of the city of London, by quarterly payments in each year, to such person or persons as shall by such incumbents, or the major part of them, be appointed from time to time to receive the same, and such fees shall be applied according to a scheme to be agreed upon by such incumbents, or the major part of them, with the consent of the bishop of the diocese.

See note to 15 & 16 Vict. c. 85, s. 33, p. 58, as to the collection of fees due to incumbents of parishes on burials, &c. in burial grounds, provided under that Act.

This section evidently contemplates that the fees shall be collected by the commissioners of sewers from the persons using the ground,—s. 1, *ante*, is, however, not explicit on the point.

Commissioners to settle fees for burial of persons not residing in London.

VI. It shall be lawful for the said commissioners, subject and without prejudice to the fees payable to incumbents under the provisions of this Act, and subject to the approval required by the seventh section of the Act of eighteenth and nineteenth Victoria, chapter one hundred and twenty-eight, to settle a scale of fees for the burial in the cemetery at Little Ilford aforesaid of persons not residing within the city of London or the liberties thereof, and from time to time to revise and vary the same.

The 18 & 19 Vict. c. 128, s. 7, requires that fees under s. 34 of the 15 & 16 Vict. c. 85, shall be fixed and settled subject to the approval of one of Her Majesty's principal secretaries of state. Any revision of or variation in the amount of the fees referred to in this section, must be made subject to the like approval.

VII. The chaplain or chaplains who for the time being shall have been or shall hereafter be appointed under the thirty-ninth section of the said recited Act, by the incumbents of the parishes within the city of London and the liberties thereof, for the performance of burials in the consecrated part of the said cemetery, shall conform to all such regulations of the commissioners of sewers for the city of London as shall not interfere with the performance of the funeral service according to the order of the united church of England and Ireland.

Chaplains of cemetery to conform to regulations of commissioners.

See the 15 & 16 Vict. c. 85, s. 39.

VIII. In this Act and in the said recited Act, so far as the same applies to the city of London, and the liberties thereof, the words "parishioner" or "inhabitant" shall mean a person inhabiting a house or dying in one of the parishes in the city of London or the liberties thereof, and when such house shall be situated in more than one parish, the parish in which the greater part of such house is situated shall be deemed to be the parish of which the person inhabiting the same is a parishioner or inhabitant.

Interpretation of terms.

The 15 & 16 Vict. c. 85, s. 52, interprets, as used in that Act, the words "parish," "ratepayers," "incumbent," "minister," "churchwarden," "overseer," "vestry" and "clerk;" but that Act and the present Act are not incorporated with each other, and therefore the same meaning is not necessarily to be assigned to those words when they occur in this Act.

IX. All the costs, charges, and expenses of obtaining and passing this Act shall be defrayed out of the consolidated rate authorized to be made by the "City of London Sewers Act, 1848."

Expenses of Act.

The SCHEDULE.

	£	s.	d.
For each burial in a catacomb in consecrated ground - - - -	0	15	0
For each burial in a vault in ditto - - - -	0	10	0
For each burial in a brick grave in ditto - - - -	0	7	6
For each burial in a private grave in ditto - - - -	0	5	0
For each burial in a common grave in ditto - - - -	0	2	6
For each burial of a pauper in ditto - - - -	0	1	0

"For each burial of a pauper" in a common grave in consecrated ground, a fee of one shilling is to be charged for the use of the incumbent. The term "pauper," is hardly known to the law, and certainly it has no precise legal meaning in this Act. The word "poor" by the 4 & 5 Will. 4, c. 76, s. 109, is to be construed "to include any pauper or poor or indigent person applying for or receiving relief from the poor rate in England or Wales or chargeable thereto." In the Lunacy Act, 16 & 17 Vict. c. 97, s. 132, the word pauper "shall mean every person maintained wholly or in part by or chargeable to any parish, union or county." But a pauper is not necessarily a person chargeable to or in the receipt of relief from the poor rates, for a person who lives upon the bounty of another is equally a pauper with the one who is supported out of the poor rates. A pauper, says Dr. Johnson, is a poor person; one who receives alms. It was doubtless intended that the fee of one shilling should be paid in those cases only in which the burial takes place by direction of the board of guardians of the union comprised within the city of London and the liberties thereof; and so far as those guardians are concerned no question can arise. There are, however, numerous persons supported by charitable gifts and otherwise in the city of London, who, it may be contended, are also "paupers," and for whose burial therefore, a fee of one shilling only can be demanded. Certainly there is nothing in the Act which confines the term "pauper" to the burial by direction of the guardians of the body of a poor person in the receipt of relief from or chargeable to the poor rates. The 15 & 16 Vict. c. 85, s. 49, which, as regards the metropolis, is confined to the cemeteries mentioned in Schedule B. of that Act, speaks of burial "at the expense of any union or parish," and does not mention the term "pauper."

20 & 21 VICT. CAP. 81.

An Act to amend the Burial Acts.

[25th August, 1857.]

WHEREAS an Act was passed in the session holden in the fifteenth and sixteenth years of Her Majesty (chapter eighty-five), "to amend the Laws concerning the Burial of the Dead in the Metropolis;" and an Act was passed in the session holden in the sixteenth and seventeenth years of Her Majesty (chapter one hundred and thirty-four), "to amend the Laws concerning the Burial of the Dead in England beyond the Limits of the Metropolis, and to amend the Act concerning the Burial of the Dead in the Metropolis;" and an Act was passed in the session holden in the seventeenth and eighteenth years of Her Majesty (chapter eighty-seven), "to make further Provision for the Burial of the Dead in England beyond the Limits of the Metropolis;" and Acts were passed in the session holden in the eighteenth and nineteenth years of Her Majesty (chapters seventy-eight and one hundred and twenty-eight), "to amend the Laws concerning the Burial of the Dead in England:" And whereas it is expedient to amend the said Acts: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

The Act here cited as an Act "to amend the Laws concerning the Burial of the Dead in England," is the 18 & 19 Vict. c. 128. The other Act cited, namely, the 18 & 19 Vict. c. 78, is an Act relating to the Duties on Stage-coaches, &c. The 18 & 19 Vict. c. 79, "An Act to amend the Law regarding the Burial of poor Persons by Guardians and Overseers of the Poor," may have been intended to be referred to, but that Act has no direct reference to the general subject of the Burial Board Acts. The intended reference to it in this Act appears to have been a mistake.

Approval of
a majority of
vestries of
parishes suf-
ficient for
Acts done
by burial
boards acting
for more than
two parishes.

I. All Acts authorized to be done by any burial board, with the approval, sanction, or authority of the vestry or vestries of the parish or parishes for which such board is constituted, may, where a joint burial board is constituted for more than two parishes, be done with the approval, sanction, or authority (as the case may require) of the vestries of the majority of such parishes.

See 15 & 16 Vict. c. 85, ss. 23, 29; 18 & 19 Vict. c. 128, s. 11.

Joint burial
boards may
be dissolved.

II. Where the vestries of two or more parishes have agreed to provide one burial ground for the common use of such parishes, such vestries may, at any time before such burial ground has been provided, determine the union between such parishes under such agreement, and upon such union being so determined all the provisions of the said Acts and this Act shall be applicable with regard to such parishes and the respective burial boards thereof as if such union had not been formed, save that any expenses already properly incurred by the joint burial board for such parishes shall be defrayed as provided by the said Acts.

See 15 & 16 Vict. c. 85, s. 23.

Burial boards
may provide
more than
one burial
ground.

III. Any burial board may, if they see fit, with the approval of one of Her Majesty's principal secretaries of state, provide more than one burial ground, and may, if they see fit, with such approval, instead of setting apart a portion of any burial ground for the purpose of such portion being used as unconsecrated ground, provide separate and distinct grounds to be used respectively as consecrated and unconsecrated burial grounds: Where before the passing of this Act any burial board has provided more than one burial ground, or has (instead of setting apart a portion of any burial ground for the purpose of being used as unconsecrated ground) provided separate and distinct grounds as consecrated and

unconsecrated burial grounds, such burial board shall be deemed to have acted lawfully and in accordance with the said Acts.

See 15 & 16 Vict. c. 85, ss. 25, 30; and 16 & 17 Vict. c. 134, s. 7.

IV. In case it appear to Her Majesty in council, upon the petition of the local board of health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local Act of parliament for the improvement of any town, parish, or borough, stating that the district of such local board of health or of such commissioners is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an order in council has been made for closing all or any of the burial grounds within the said district, it shall be lawful for Her Majesty, with the advice of her privy council, in case Her Majesty see fit so to do, to order that such local board shall be a burial board for the district of such local board, or that such commissioners shall be a burial board for the district of such commissioners, and thereupon such local board or such commissioners, as the case may be, shall be a burial board for such district accordingly; and the powers and provisions of the Acts hereinbefore mentioned (except the provisions relating to the constitution or appointment and resignation of members of burial boards), and the provisions herein contained, shall extend to the district of such board, and to such board, or to the district of such commissioners, and to such commissioners, and to any burial ground and places for the reception of the bodies of the dead previously to interment which may be provided by such board or by such commissioners, in like manner as to any parish or parishes and the burial board thereof, and any burial ground and

Local board of health may, by order in council, be constituted a burial board.

any such places as aforesaid provided by such last-mentioned board, save that no approval, sanction, or authorization of any vestry shall be requisite: Provided always, that notice of such petition, and of the time when it shall please Her Majesty to order the same to be taken into consideration by the privy council, shall be published in the *London Gazette*, and in one of the newspapers usually circulating in the district of such local board or of such commissioners, one month at least before such petition is so considered: provided also, that this enactment shall not apply to any such district as aforesaid exclusively consisting of the whole or part of one corporate borough within the meaning of the Public Health Act, 1848.

See 15 & 16 Vict. c. 85, ss. 10, 11; and 18 & 19 Vict. c. 128, ss. 3, 11, as to the establishment of burial boards by vestries; and ib. s. 20, as to local boards of health exercising powers of Burial Acts.

The excepted provisions referred to in this section will be found in the 15 & 16 Vict. c. 85, ss. 11-14.

The term "corporate borough" is, by the Public Health Act, 1848 (11 & 12 Vict. c. 63, s. 2), to be construed to mean any corporate borough mentioned in the schedule of the 5 & 6 Will. 4, c. 76 (Municipal Corporations Act), and any borough incorporated by charter granted or to be granted in pursuance of that or any subsequent Act; and by the Public Health Supplemental Act, 1849 (12 & 13 Vict. c. 94, s. 10), it is to be construed to include any city, borough, port, cinque port, or town corporate named in the schedules to the 5 & 6 Will. 4, c. 76, and to any city, borough, port, cinque port, or town corporate incorporated by charter granted or to be granted in pursuance of that or any subsequent Act. See also s. 29, *post*. As regards the establishment of burial boards for parishes in boroughs, see 17 & 18 Vict. c. 87, s. 1.

This section is silent as to who is to publish the notice of petition; but it is apprehended that the local board of health will be the proper authority to do so. Certainly there is no obligation on the privy council to publish it. The petition may be sent up at any time; but it cannot be taken into consideration until the notice is published.

Burial board
may be esta-
blished for a

V. The vestry, or meeting in the nature of a vestry, of any parish, new parish, township, or

other district not separately maintaining its own poor, and which has had no separate burial ground, may appoint a burial board; and such vestry or meeting, and the burial board appointed by it, shall exercise and have all the powers which they might have exercised and had under the said Acts and this Act if such parish, new parish, township, or district had had a separate burial ground before the passing of the said Act of the eighteenth and nineteenth years of Her Majesty: Provided always, that all the powers of any other vestry or meeting and burial board, if any, shall then cease and determine, so far as relates to such parish, new parish, township, or district as aforesaid; and until a burial ground shall be so provided as aforesaid and consecrated for any new parish or district created or to be created pursuant to the provisions of the sixth and seventh Victoria, chapter thirty-seven, the seventh and eighth Victoria, chapter ninety-four, and the nineteenth and twentieth Victoria, chapter one hundred and four, or any or either of them, and to which the said Acts, or any or either of them, may apply, the incumbent of such new parish or district (if any burial ground has been or shall be provided under the herein recited Acts for the burial of the dead, or any or either of them, for any parish or parishes out of rates to which such new parish or district, or any part thereof, shall have contributed or contribute or be liable), shall, with respect to the burial in such last mentioned burial ground of the remains of the parishioners or inhabitants of such new parish or district, or of such part thereof as shall have contributed or contribute as aforesaid, as the case may be, perform the same duties, and have the same rights, privileges, and authorities, and be entitled to the same fees, and also the clerk and sexton of such new parish or district shall, when necessary, respectively perform the same duties, and be entitled to the same fees, in respect of such burials, as if the said burial

ground were exclusively the burial ground of such new parish or district, subject nevertheless to all provisions to which the incumbents, clerks, and sextons of original parishes are respectively subject in and by the said Burial Acts, or any or either of them: Provided also, that nothing herein contained shall affect the rights or privileges of any existing incumbent, clerk, or sexton without the consent of such incumbent, clerk, or sexton respectively.

The words "parish," "new parish," at the beginning of this section refer to parishes for ecclesiastical purposes; for every place which is a "parish" in the sense of the 43 Eliz. c. 2, s. 1, separately maintains its own poor. The appointment of a burial board for a place not separately maintaining its own poor under this section, will be made in the manner pointed out in the 15 & 16 Vict. c. 85, ss. 10, 11. The expenses of the burial board so appointed will be defrayed and provided for in the manner pointed out in the 18 & 19 Vict. c. 128, s. 13. The Acts referred to in the text as the 6 & 7 Vict. c. 37; 7 & 8 Vict. c. 94, and 19 & 20 Vict. c. 104, are the Acts for making better provision for the spiritual care of populous parishes, and for the formation and endowment of separate and distinct parishes.

Under this section, until a burial ground shall have been provided and consecrated for the new parish or district in the manner provided for by the 15 & 16 Vict. c. 85, ss. 25, 30; 16 & 17 Vict. c. 134, s. 7; 17 & 18 Vict. c. 87, s. 12; 18 & 19 Vict. c. 128, ss. 9, 10, and 20 & 21 Vict. c. 81, s. 3, the incumbent, clerk, and sexton of the new parish or district, if any burial ground has been provided under the above Acts for the parish of which such new parish forms a part, is with respect to burials in such burial ground to perform the same duties and have the same rights and privileges and be entitled to the same fees as if the burial ground were exclusively the burial ground of the new parish or district. As regards the provisions to which incumbents, &c. are subject, see 15 & 16 Vict. c. 85, ss. 32, 33, 35, 39, 52.

Ordinary of diocese may consecrate the whole or part of land belonging to any parish for the burial of poor persons.

VI. Where the guardians of any parish or union are or shall hereafter become possessed of any land suitable to the purposes of a burial ground, and the Poor Law Board shall consent to the same being appropriated to the reception of the dead bodies of any poor persons whom such guardians shall be authorized or required by law to bury, it shall be

lawful for the ordinary of the diocese wherein such land shall be situated, if he see fit, to consecrate the whole or a part of such land for burial purposes, and after consecration the guardians may lawfully direct any such dead body as aforesaid to be buried therein; and the land so consecrated shall not thenceforth be used for any other purposes than for burials according to the rites of the united church of England and Ireland, and shall be kept in decent order; and the fences thereof, and any building or other erection therein or adjoining thereto used for the performance of the burial service, shall be maintained in good repair by the guardians out of the common fund of such parish or union: Provided nevertheless, that the guardians shall not be authorized to direct the body of any poor person to be buried in such grounds who, or whose husband, wife, or next of kin, shall, by letter addressed to the master of the workhouse or otherwise, have expressly desired burial to take place elsewhere.

Burial grounds when established by boards of guardians under this section may be used for the burial of out-door as well as in-door poor. On the consent of the poor law board being given to the appropriation of the land for the purposes of burial, the guardians may at once bury in the portion intended to be reserved unconsecrated the bodies of such poor persons as they may lawfully bury in unconsecrated ground. They cannot lawfully bury in the other portion of the ground before it is consecrated. The land need not be attached to the workhouse or in its immediate neighbourhood; and so far as burials in it are concerned, the language of the section—the guardians may lawfully direct any such dead body as aforesaid to be buried therein—seems to override the requirement of the 7 & 8 Vict. c. 101, s. 81 as to the burial taking place in the parish of chargeability, or in which the death may have occurred. Moreover, no restriction is placed upon the situation of the land; it may be in any parish within the union, or even beyond the limits of the union.

It will be proper that guardians acting under this provision should have an instrument drawn in due legal form appropriating the land as a burial ground. The instrument should distinguish the part which is to be consecrated, from the part

which is to remain unconsecrated, and also the boundaries of the land. There should also be a deed of consecration executed by the bishop of the diocese.

As this Act and the other Burial Acts are to be construed together as one Act (s. 30, *post*), the burial ground provided by the guardians under this section for the burial of paupers will be a burial ground used for burials under the 18 & 19 Vict. c. 128, s. 9, and therefore must not be situated within the distance of 100 yards from any dwelling house without the consent in writing of the owner, lessee, and occupier of such dwelling house (15 & 16 Vict. c. 85, s. 25). This it is apprehended will not prevent the guardians from appropriating land within that distance of the workhouse as a burial ground, provided there be no other houses within the prescribed distance, as the guardians are themselves both the owners and the occupiers of the workhouse. It may be added that the guardians are not "required by law" to bury the body of any poor person, unless indeed it be the body of a poor person who may have died in a workhouse under their control. See *R. v. Stewart*, 12 A. & E. 773.

Provision
for transfer
to a burial
board of
a burial
ground pro-
vided under
Church
Building
Acts.

VII. Where a burial ground has been provided for any parish under any of the Acts commonly referred to or known as the Church Building Acts, and the same has been consecrated, and any money expended in providing such burial ground has been borrowed on the security of the church rates, it shall be lawful for the incumbent of the parish, with the consent of the ordinary and the burial board of such parish, or of any borough or district in which such parish is wholly or in part comprised, by instrument in writing under the hands and seals of such incumbent and ordinary, and under the seal of the said burial board, to declare that, in consideration of the payment of the debt by the said burial board, or of such sum as shall be mutually agreed upon, with the consent of the persons, signified in writing under their hands, to whom two-thirds of such debt is due, the said burial ground shall be vested in and be under the care and management of such burial board, and thereupon the same shall be vested in and be under the care and management of such board, and shall be subject to the provisions of the herein-before

recited Acts and this Act applicable to a consecrated burial ground or the consecrated part of any burial ground provided by any burial board; and any money borrowed as aforesaid, and remaining owing, and the interest due and to become due thereon, and all costs and expenses occasioned by the non-payment thereof, or incurred in providing such burial ground, and then remaining unpaid, shall be charged on and paid out of such rates or fund as under the said last-mentioned Acts and this Act would be chargeable with the expense of providing a burial ground by such board, and such declaration as aforesaid shall be registered in the registry of the diocese; and such board may, with the approval of the vestry, enlarge such burial ground, by the addition of ground to be used for burials otherwise than according to the rites of the Church of England, and to be used subject to the provisions of the Acts herein recited and of this Act in respect to the unconsecrated portions of burial grounds.

The Acts referred to as the Church Building Acts are the 55 Geo. 3, c. 68; 56 Geo. 3, c. 141; 59 Geo. 3, c. 134; 3 Geo. 4, c. 72.

The provisions applicable to unconsecrated burial grounds are the 15 & 16 Vict. c. 85, s. 30; 16 & 17 Vict. c. 134, s. 7; 18 & 19 Vict. c. 128, s. 14; 20 & 21 Vict. c. 81, s. 3.

VIII. It shall and may be lawful for the vestry of any parish in which any burial ground closed by order in council may be situate, and which does not belong to such parish, by resolution of the vestry at a meeting called for that purpose, to purchase such burial ground, and from the time of such purchase such burial ground shall belong to such parish, and be subject to all the conditions affecting the burial grounds of the parish in which the same is situate.

Vestry of parish in which burial ground is closed may purchase such burial ground if not belonging to parish.

The 15 & 16 Vict. c. 85, s. 51, with the consent of the vestry enabled the vendors to convey the ground to trustees, to be named by the incumbent and churchwardens of the parish in

which it is situated. Under this new provision, it will be conveyed direct to the vestry, and become the property of the parish, subject to the provisions in the 18 & 19 Vict. c. 128, s. 18.

Burial boards not to be appointed for united parishes, &c. in cases provided for by 18 & 19 Vict. c. 128, without consent of secretary of state, where one of the places separately maintains its own poor or has a burial ground.

IX. And whereas by the said Act of the eighteenth and nineteenth years of Her Majesty, chapter one hundred and twenty-eight, it is enacted that where a parish or place has been united with any other parish or place, parishes or places, for all or any ecclesiastical purposes, or where two or more parishes or places have heretofore had a church or a burial ground for their joint use, or where the inhabitants of several parishes or places have been accustomed to meet in one vestry for purposes common to such several parishes or places, it shall be lawful for the vestry, or any meeting in the nature of a vestry, of such several parishes or places, in any of the cases aforesaid, and whether any one or more of such parishes or places do or do not separately maintain its own poor, to appoint a burial board, and from time to time to supply vacancies therein, and to exercise the same powers of authorization, approval, and sanction in relation to such burial board, and such other powers as, under the Acts therein recited and that Act, are vested in the vestry of a parish or place separately maintaining its own poor: Where any of the several parishes or places under the circumstances provided for in the said enactment separately maintains its own poor, or has a separate burial ground, it shall not be lawful for the vestry, or meeting in the nature of a vestry, of such several parishes or places, to appoint a burial board under the said enactment without the approval of one of Her Majesty's principal secretaries of state; and in case it appear to the secretary of state that any such parish or place has a sufficient burial ground, or that otherwise it would not be expedient that the powers given by the said enactment should be exercised in relation to such parish or place, the secretary of

state may direct that such parish or place shall be excepted from the operation of the said enactment, and thereupon the same shall be excepted accordingly; and the inhabitants of the remaining parish or parishes, place or places, may assemble in vestry, or in a meeting in the nature of a vestry, from time to time, and in such vestry or meeting may proceed in like manner under the said Acts and this Act in all respects as if the inhabitants of such last-mentioned parish or parishes, place or places, exclusively had a vestry for their common purposes, and were wholly unconnected with the parish or place so excepted.

See 18 & 19 Vict. c. 128, s. 11.

X. It shall be lawful for Her Majesty, by order made by and with the advice of Her privy council, on the representation of one of Her Majesty's principal secretaries of state, from time to time to establish such regulations as to Her Majesty may seem proper for the protection of the public health, and for the maintenance of public decency, in respect of all burials in common graves in any cemeteries named in Schedule (B.) to the Act fifteenth and sixteenth Victoria, chapter eighty-five, and in respect of the like burials in any cemetery established under the authority of any local Act of parliament; and every such order in council shall be published in the *London Gazette*; and all persons having the care of such cemeteries and burial grounds and places shall conform to and obey such regulations; and any such person who shall violate or wilfully neglect to observe any of such regulations shall, on summary conviction thereof before two justices of the peace, forfeit and pay any sum not exceeding ten pounds: Provided always, that no such representation shall be made in relation to any cemetery or burial ground until ten days previous notice in writing of the

Orders in council may be made for regulating burial grounds, &c.

intention to make such representation shall have been given to the person or one of the persons having the control or care of such cemetery or burial ground.

With respect to the words "any cemetery established under the authority of any local Act of Parliament," see 16 & 17 Vict. c. 134, ss. 5 & 7, and notes thereon.

See 15 & 16 Vict. c. 85, ss. 7, 49, 54, as to the former provisions, with regard to the cemeteries named in Schedule B. of that Act.

No wall or fence required between the consecrated and unconsecrated portions of burial ground. Boundary marks to be provided.

XI. It shall not be necessary to erect or maintain any wall or fence between the consecrated and the unconsecrated portions of any burial ground provided under the hereinbefore recited Acts and this Act, or any of them : Provided always, that in the case of any burial ground where there shall be no such wall or fence, it shall be the duty of the burial board having the care of such burial ground to place, and from time to time to repair and renew such boundary marks of stone or iron as may be sufficient to show the boundaries of such consecrated and unconsecrated portions respectively.

As to the consecration of burial grounds, see 15 & 16 Vict. c. 85, s. 30 ; 16 & 17 Vict. c. 134, s. 7, and 18 & 19 Vict. c. 128, s. 14.

Appeal.

XII. If, upon the application in writing by any burial board to the bishop of the diocese for the consecration of a burial ground, declared in such writing to be in a fit and proper condition for the purpose of interment according to the rites of the United Church of England and Ireland, which application the board is required to make as soon as such ground is in such fit and proper condition, the said bishop shall refuse to consecrate the same, it shall be lawful for such burial board to appeal from such refusal to the archbishop of the province, who shall decide the matter in dispute ; and if the said archbishop shall decide that the said burial ground is not in a fit and proper condition as aforesaid, then the board shall

be bound to put the said ground in a fit and proper condition ; and if the said archbishop shall decide that the said burial ground is in a fit and proper condition as aforesaid and ought to be consecrated, such decision shall be communicated in writing by the archbishop to the bishop aforesaid ; and if after such communication the said bishop shall not within one calendar month consecrate the said burial ground, the said archbishop shall, under his hand and seal, license the same for the interment of bodies according to the rites of the United Church of England and Ireland, and the licence of the said archbishop so granted as aforesaid shall, until such burial ground be consecrated, operate to make lawful the use of the same as if it had been consecrated.

The licence of the archbishop, when once it is given, will be irrevocable apparently, as the Act gives him no power to withdraw it. So far as the legal effect of it is concerned, it would seem that there will be no absolute necessity for the subsequent consecration of the ground, as the licence is to answer all the purposes of consecration, ecclesiastical as well as otherwise. See also the provision in the following section.

XIII. In any burial ground provided under the powers of the Acts hereinbefore recited or this Act, respecting which one of Her Majesty's principal secretaries of state shall have certified that the necessary provisions have been complied with, it shall be lawful for the incumbent or incumbents of such parish or parishes for which such burial ground is provided, or his or their curate or curates, or such duly qualified person as any such incumbent may authorize, if such incumbent, curate, or such duly qualified person respectively think fit, to bury in such burial ground prior to the decision of the bishop or archbishop upon the application for the consecration thereof.

Power to incumbent or curate to bury in burial ground certified by secretary of state prior to consecration.

XIV. Whereas by section thirty-two of the Act of the third year of King George the Fourth,

Section 32 of 3 G. 4, c. 126, exempting

funerals from tolls, extended to funerals in burial grounds provided for the parish, although not within its limits.

chapter one hundred and twenty-six, it is enacted, that no toll shall be demanded or taken by virtue of that or any other Act or Acts of parliament on any turnpike road of or from any inhabitant of any parish, township, or place going to or returning from attending the funeral of any person who shall die and be buried in the parish, township, or place in which any turnpike road shall lie, from and after the first day of July one thousand eight hundred and fifty-eight, or from and after the termination of any now existing lease of tolls expiring before that date, the said enactment shall extend to exempt from toll every person going to or returning from attending the funeral of any person who shall be buried in any burial ground provided for the parish, township, or place in which he died under the Acts hereinbefore recited and this Act, or any of them, or under any other Act of parliament, although such burial ground be not within the limits of the parish, township, or place for which it may have been provided, or in which the turnpike road shall lie.

Persons wilfully destroying, &c. register book of burials guilty of felony.

XV. That every person who shall wilfully destroy or injure, or cause to be destroyed or injured, any register book of burials, kept according to the provisions of this Act, or any part or certified copy of any part of such register, or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register or certified copy thereof, or shall wilfully insert or cause to be inserted in any registry book or certified copy thereof any false entry of any burial, or shall wilfully give any false certificate, or shall certify any writing to be a copy or extract of any such register book, knowing the same to be false in any part thereof, or shall forge or counterfeit the seal of any burial board, shall be guilty of felony.

From the language used in this section, it would apparently be a felony to "wilfully destroy or injure" a certified copy of

the entry of any particular burial which may be extracted from the register. But this, it is apprehended, is not the intention of the section.

XVI. Whereas by the Act of the fifty-second year of King George the Third, chapter one hundred and forty-six, section four, it is provided, that whenever the ceremony of burial shall be performed in any other place than the parish church or churchyard of any parish (or the chapel or chapelyard of any chapelry providing its own distinct registers), and such ceremony shall be performed by any minister not being the rector, vicar, minister, or curate of such parish or chapelry, the minister who shall perform such ceremony of burial shall on the same or on the next day transmit to the rector, vicar, or other minister of such parish or chapelry, or his curate, a certificate of such burial, and the rector, vicar, minister, or curate of such parish or chapelry shall thereupon enter such burial according to such certificate in the book kept pursuant to that Act for such purpose: And whereas distinct registers are by law required to be kept in the burial grounds provided under the Burial Acts: the recited enactment of the said Act of King George the Third shall not apply in any case where the ceremony of burial is performed in a burial ground provided or to be provided under the Acts of Her Majesty hereinbefore recited under this Act, or any of them.

Section 4 of 52 G.3, c. 146, not to apply to burials in grounds provided under the Burial Acts.

As to the keeping of such registers, see 16 & 17 Vict. c. 134, s. 8.

XVII. No fees shall be charged or received by any burial board in respect of any service done or right granted in the unconsecrated portion of any burial ground provided by such board, but such as are identical in amount with the fees charged and received in respect of the same service or right in the consecrated portion of such ground, less any such portion of such corresponding fees or payments

Fees for service done in unconsecrated portion of burial ground to be identical as for consecrated portion.

which may be received for or on account of any incumbent, churchwarden, clerk, or sexton, or of any trustee for or on behalf of any incumbent, churchwarden, clerk, or sexton.

See the 15 & 16 Vict. c. 85, ss. 32, 33, 34, 35, 36, 37, 39, 49; 17 & 18 Vict. c. 87, s. 10; 18 & 19 Vict. c. 128, s. 7, as to burial fees. Existing tables of fees which make the distinction against which the provision in this section is directed, must be remodelled in accordance with this new provision. The latter part of this section refers to the state of circumstances contemplated by the 15 & 16 Vict. c. 85, ss. 36 & 37. So far as payments to the burial board for the use of the ground, &c. are concerned, the fees must be identical for burials in consecrated and unconsecrated grounds. Where, however, ecclesiastical fees are payable to the burial board, under the 15 & 16 Vict. c. 85, ss. 36 & 37, those fees may be charged in addition in respect of burials in the consecrated ground. They must, however, be separately distinguished in the table to be submitted to the secretary of state, under the 15 & 16 Vict. c. 85, s. 34, and 18 & 19 Vict. c. 128, s. 7. See also note to 15 & 16 Vict. c. 85, s. 33.

XVIII. So much of section twenty of the firstly hereinbefore recited Act as requires "that there shall be paid in every year, in addition to the interest of the money borrowed and unpaid, not less than one-twentieth of the principal sum borrowed, until the whole is discharged," shall be repealed, and the provisions of the other Acts hereinbefore recited to which the said section has been extended shall be construed accordingly.

XIX. The clauses of the Commissioners Clauses Act, 1847, with respect to mortgages to be executed by the commissioners, shall be incorporated with this Act, and shall apply to mortgages and other securities to be executed by burial boards; and for the purposes of this Act the expression "the commissioners" where used in the said clauses shall mean the burial board acting in the execution of the said clauses and the Acts hereinbefore recited or this Act.

The sections of the 10 Vict. c. 16 (Commissioners Clauses Act, 1847), here referred to are ss. 75-88.

XX. Provided always, that for the purpose of providing a sinking fund for paying off the principal money borrowed on mortgages granted under any of the said Acts or this Act, the burial board shall once in every year set aside, out of the monies charged by such mortgages, such sum as they think proper, being a sum equal to or exceeding one-fiftieth part of the principal money so borrowed.

Sinking fund to be provided for paying off mortgages.

See 15 & 16 Vict. c. 85, s. 20, as to borrowing money for the purposes of these Acts, on the security of the poor rates.

XXI. Any burial board or council of a borough may, for the purpose of raising money, instead of making mortgages under any of the said Acts, grant terminable annuities for a life or lives, or for any number of years not exceeding thirty years, to be paid out of the like monies as provided with regard to the monies secured by such mortgages.

Power to burial boards to borrow money on terminable annuities.

XXII. Any money required by the council of any borough for the purpose of defraying the expense of executing the Acts hereinbefore recited, or any of them, or this Act, or for paying any monies borrowed under such Act, or any interest thereon, may be raised by such council, if they think fit, by means of a separate rate, to be called a burial rate, to be charged upon all property within such borough liable to be charged to the borough rate; and the council of such borough shall have all such powers for making and levying such rate, and all provisions shall be applicable in respect thereof, as in the case of a borough rate made under the Act passed in the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six.

Power to councils of boroughs to make a separate rate for burial and expenses.

See 17 & 18 Vict. c. 87, s. 3, as to the payment of expenses of carrying the Acts into execution in boroughs out of borough fund or borough rates. With respect to the making and levying a borough rate, see 5 & 6 Will. 4, c. 76, s. 92.

XXIII. It shall be lawful for Her Majesty, upon the representation of one of Her Majesty's principal

Orders in council may be issued, on

representa-
tion of secre-
tary of state,
so as to pre-
vent vaults,
&c. being
dangerous to
health.

secretaries of state, by and with the advice of her privy council, from time to time to order such acts to be done by or under the directions of the churchwardens or such other persons as may have the care of any vaults or places of burial, for preventing them from becoming or continuing dangerous or injurious to the public health; and every such order in council shall be published in the *London Gazette*, and such churchwardens or other persons shall do or cause to be done all acts ordered as aforesaid, and the expenses incurred in and about the doing thereof shall be paid out of the poor rates of the parish: Provided always, that no such representation shall be made until ten days previous notice of the intention to make such representation shall have been given to the churchwardens or other persons, or one of the churchwardens or other persons, having the care of the vaults or places of burial to which the representation relates.

With respect to the continuance of burials in vaults, see the 15 & 16 Vict. c. 85, s. 6, and 16 & 17 Vict. c. 134, s. 4.

Trustees of
closed ceme-
teries em-
powered,
with sanction
of secretary
state, to let,
lease, or sell
portions
thereof which
have not re-
ceived inter-
ments.

XXIV. In all cases in which unconsecrated land or buildings is or are vested in a trustee or trustees, either under any local Act or otherwise, for the purposes of a cemetery or burial ground, and burials in such cemetery or burial ground shall by order in council under the hereinbefore recited Acts or any of them have been ordered to be wholly or partially discontinued, it shall be lawful for the trustee or trustees for the time being of such cemetery or burial ground, from time to time, with the sanction of one of Her Majesty's principal secretaries of state, to let, demise, or lease any part or parts in which no interment shall have taken place of such land or buildings, and to renew or accept surrenders of any leases or tenancies thereof, and to sell and absolutely dispose thereof for money in gross, or for any

perpetual or other rent or rents to be made payable thereout, and by public auction or private contract, and to sell all or any such perpetual or other rent or rents for money in gross and in manner aforesaid, and for any of the purposes aforesaid to make and execute any contracts, conveyances, leases, or other assurances, and to take any measures and make any arrangements which may be deemed expedient; and upon any such lease or sale as aforesaid a grant or conveyance by such trustee or trustees alone shall be a sufficient assurance of the property thereby purported to be leased or sold, and the receipts of such trustee or trustees shall be effectual discharges for the monies therein expressed to have been received, and shall absolve any lessee or purchaser from having to see to or being answerable for the application of such monies; and the net monies to be received by such trustee or trustees under any of the preceding powers shall be applied by them in discharge of any incumbrances affecting such cemetery or burial ground, and any debts which such trustee or trustees may have properly incurred in their fiduciary capacity; and any residue of such monies, shall, where such land or buildings shall have been held in trust for any parish, be applied in such manner, for the benefit of such parish, as the vestry of such parish shall direct; but where such land or buildings shall have been held in trust for the benefit of private persons, such residue shall be divided by such trustee or trustees rateably among the cestuisque trusts; and it shall be lawful for such trustee or trustees so to apply any reserved fund in his or their hands.

The 15 & 16 Vict. c. 85, s. 28, enables burial boards to sell and dispose of lands purchased by them under that Act, or any part thereof, in which no interment may have taken place, and which it may appear to the board may be properly sold or disposed of. The present enactment extends only to lands vested in a trustee or trustees for the purposes of a cemetery.

Bodies not to be removed from burial grounds, save under faculty without licence of secretary of state.

XXV. Except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose, it shall not be lawful to remove any body, or the remains of any body, which may have been interred in any place of burial, without licence under the hand of one of Her Majesty's principal secretaries of state, and with such precautions as such secretary of state may prescribe as the condition of such licence; and any person who shall remove any such body or remains, contrary to this enactment, or who shall neglect to observe the precautions prescribed as the condition of the licence for removal, shall, on summary conviction before any two justices of the peace, forfeit and pay for every such offence a sum not exceeding ten pounds.

The prohibition in this section extends to any place of burial, and not merely to burying grounds which have been closed or to burying grounds provided by burial boards, or otherwise. In the recent case of *R. v. Sharpe*, 26 L. J. R. n. s., M. C. 47, it was held to be a misdemeanor at common law to enter an unconsecrated burial ground, and without the knowledge or consent of the owners of the ground or authority of any kind, to dig up and carry away a corpse buried therein; and this even although the person committing the act may have been actuated by motives of affection and respect to the dead, and of religious duty, and have conducted the removal decently. The 15 & 16 Vict. c. 85, s. 42, enables places to be established for the reception of bodies until they are interred.

Burial boards may in certain cases purchase cemeteries which have been closed.

XXVI. Where any cemetery in which burials have, by order in council, under the herein-before recited Acts or any of them, been ordered to be discontinued, is adjoining or near to any land appropriated or about to be appropriated by any burial board for the purposes of a burial ground, and appears to such board eligible for the purpose of appropriating or erecting buildings for or making approaches to such burial ground, it shall be lawful for such board, with the approval of the vestry or respective vestries, to purchase such cemetery; and

where in the like case any cemetery has been so purchased before the passing of this Act, the purchase thereof shall be deemed to have been lawful: Provided always, that, notwithstanding such purchase, such order in council shall remain in full force and effect in relation to such cemetery.

Orders in council to remain in force.

See 15 & 16 Vict. c. 85, s. 26, as to the purchase of lands for burial grounds.

XXVII. No resolution or proceeding of any vestry, or meeting in the nature of a vestry, for the purposes of the said recited Acts and this Act, or any of them, shall be void or voidable by reason of any defect or irregularity of or in notice of such vestry or meeting, or any other error in form in the calling of such vestry or meeting, or in the proceedings thereat, unless notice in writing of such defect or irregularity or error shall have been given at such vestry or meeting, or within seven days after the day of the holding thereof, to the churchwardens or other persons to whom it belongs to call meetings of such vestry, or such meeting in the nature of a vestry, who shall thereupon call another meeting for the purpose of considering the previous resolution or proceeding or the matter thereof; and no such resolution or proceeding made or taken at any such vestry, or meeting in the nature of a vestry, before the passing of this Act, which shall not have been objected to by notice in writing to such churchwardens or persons as aforesaid, shall be deemed invalid by reason of any such defect, irregularity, or error.

Resolutions, &c. of vestries not to be void by reason of irregularity of notices, &c.

The written notice, if given at the vestry meeting, should be given to the chairman of the vestry and not to the churchwardens, if any are present. See also the 18 & 19 Vict. c. 128, s. 3, as to calling such meetings without requisition.

XXVIII. In the construction of this Act the expression "burial board" shall mean a burial board

"Burial board."

constituted under the herein-before recited Acts or any of them, or under this Act.

See 15 & 16 Vict. c. 85, s. 24, as to the incorporation of burial boards.

Construction
of certain
expressions
used in
17 & 18 Vict.
c. 87.

XXIX. That the expression "borough" whenever used in the said Act of the seventeenth and eighteenth years of Her said Majesty shall be construed to include any city, borough, port, cinque port, or town corporate named in the schedules annexed to an Act passed in the sixth year of the reign of King William the Fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and to any city, borough, port, cinque port, or town corporate incorporated by charter granted or to be granted in pursuance of that or any subsequent Act; and the words "town council of any borough," or "council of any borough," wherever used in the said Act of the seventeenth and eighteenth years of Her said Majesty, shall (as well with respect to all past as to future proceedings under the same Act, and for the purpose of confirming and making valid all such past proceedings,) be construed to mean town council or council of any city, borough, port, cinque port, or town corporate.

See s. 4, *ante*, and note thereon, as to the words "corporate borough."

Recited Acts
and this to
be as one.

XXX. The herein-before recited Acts and this Act shall be construed together as one Act.

APPENDIX.

REGULATIONS OF THE SECRETARY OF STATE FOR THE HOME DEPARTMENT.

I. Instructions for Burial Boards in Providing Ceme- teries, and making arrangements for Interments under the Burial Acts 15 & 16 Vict. Cap. 85, and 16 & 17 Vict. Cap. 134.

I.

Wherever practicable a site for a proposed cemetery should be chosen in such a position that any effluvia from the ground may be carried away from the town by the prevailing winds.

1. Position
of cemetery.

II.

The distance of a cemetery from the outskirts of a town must depend on a variety of considerations. Where the town is rapidly on the increase, the cemetery should be placed at a greater distance than in cases where the population is nearly stationary, or increases very slowly. The distance should be greater in large towns than in small towns. Sites have been already selected by burial boards, in which the distance varies from a third of a mile to several miles, according to the size of the town.

2. Distance
of cemetery.

III.

Cemeteries should not be established in neighbourhoods where buildings are in progress, or are contemplated. Those neighbourhoods should be selected to which towns are least likely to extend.

3. Cemeteries
should not
be established
in populous
neighbour-
hoods.

IV.

Where several townships or parishes unite to form a common cemetery, it should be so placed as to be convenient for the majority of the population.

4. Common
cemetery
should be
conveniently
situated.

V.

No cemetery should be established near wells, or near any source, reservoir, or open conduit supplying water for domestic use.

5. Cemeteries
not to be
opened near
wells or con-
duits.

VI.

6. Sufficient fall for drainage necessary. Care should be taken that there is a sufficient fall for drainage, to ensure dryness of the soil to the depth of seven or eight feet at least.

VII.

7. Soils wet or subject to flooding to be avoided. Ground which is subject to periodical flooding, or which contains water springs, should be avoided, as should also all ground the subsoil of which is apt to be charged with water by infiltration from rivers, streams, &c. Generally, wet soils, which do not admit of drainage, should be rejected.

VIII.

8. Importance of quality of soils selected for cemeteries. The quality of the soil is of great importance as regards economy. The best and cheapest soils for cemeteries are,—

Dry, light-coloured sands or gravels.

Light, porous, dry earthy soils.

Light loamy soils, especially if mixed with sand or gravel.

Calcareous soils and marls.

Chalk.

The least favourable soils are :—

Dense clays.

Soils containing alumina, iron, or other mineral impregnation.

Moor or bog earth.

Rock, or stoney ground.

Dry, open, porous soils of the class first mentioned admit readily atmospheric air and moisture, both of which facilitate decay, and permit the graves to be re-opened sooner for second interments : while they absorb and diffuse the gases.

Soils should be selected which are not liable to fall in in working.

Dense clay soils are impervious to air ; they retain water, which accumulates in a grave : the excess of moisture and the absence of atmospheric air in sufficient quantity retard decay to more than double the period at which it is completed in more suitable soils. Clay soils retain the gases. They are besides apt to crack in dry weather, and to permit the escape of dangerous exhalations in a concentrated form. Clays can be improved by preparing the soil used for filling up graves, and by an expensive process of deep drainage ; but under any circumstances clay soils are much more expensive than many others, and should only be resorted to when there is no other choice.

Earths containing mineral substances, such as those mentioned, and bog earths, are antiseptic and preserve corpses from decay.

IX.

Before the ground is fixed upon, it ought to be examined by borings to the depth of six or eight feet to ascertain its nature.

9. Ground should be examined before selection is made.

X.

The extent of ground required for a parish or township cemetery depends—

- 1st. On the annual number of deaths.
- 2nd. On the proportion of deaths of children or young persons to the total deaths of the parish or township.
- 3rd. On the character of the soil, and the manner of burial.
- 4th. On the annual increase of the population.
- 5th. The extent of surface devoted to each interment.

The actual amount of *burial space* may be determined approximately from these elements.

10. Amount of ground required for cemeteries.

Town populations living under defective sanitary conditions require a larger amount of burial space, in proportion to the number of inhabitants, than is necessary in more healthy districts. Thus, it is shown in the "Supplementary Report on the Practice of Interment in Towns" (p. 130), that the space required for a comparatively healthy population in the rural parts of Herefordshire, as compared with the burial space requisite for an unhealthy population of the same number in the parish of Whitechapel, would be as 7 to 12.

The annual mortality is a safer guide in determining the size of a cemetery than the amount of population. The annual mortality, however, differs remarkably as regards ages in different districts. It is shown in the same report that, in the rural districts of Herefordshire, 32 per cent of the annual deaths take place in children and young persons under the age of fourteen, and that in Whitechapel about 49½ per cent. of the annual deaths take place under that age. As a much smaller area of ground suffices for the grave of a child than for that of an adult, it is obvious that more space would be required to bury an annual average of 100 deaths in Herefordshire than in Whitechapel. The country cemetery would require to be about one-eighth part larger than the town cemetery, for the same number of interments.

If a dry, porous, sandy, or earthy soil be selected, such a soil, speaking approximately, would admit of being buried in at the rate of 120 interments per acre per annum.*

If a wet or clay soil be chosen, not more than 60 or 70 interments per acre per annum could take place in it. The

* This may be considered as a medium number. For a town population, five or six additional interments per acre per annum could be accommodated on account of the larger number of deaths of children; and of a healthy country population, five or six interments fewer, on account of the larger average size of the grave space.

number however, might be somewhat increased by improving the soil in the manner already mentioned.

The amount of *burial space* could hence be easily determined for the two classes of soils. The average annual mortality of a parish or township, divided by the number of interments per acre per annum, would give the number of acres of burial space required sufficiently near for practical purposes.*

If mineral and antiseptic soils are chosen, it would be next to impossible to determine the area required on any data founded on the period of decay of the corpse.

Besides the space actually required for the accommodation of the average annual interments, some allowance ought to be made for increase of population, and sufficient ground set apart for buildings, walks, and decorative purposes. On this latter point the burial board will have to be guided by local circumstances. In some instances an addition of a sixth part has been made to the burial space for access, decoration, &c.

It may be useful to state that, in one instance, a burial board has provided forty-two acres for a population of 30,000; in another case five acres have been set apart for a population of 6,200; and in a third instance eight acres have been purchased for a town with 12,500 inhabitants. The burial board of the city of London has provided ninety-one acres for a population of 130,000, with an annual mortality of about 3,120. It would be well on many accounts that a large view of the question should be taken, and a sufficient area provided

* The following examples of a method of calculating the amount of burial space (*of the best soils*) required for a town population and for a country population, are adapted from forms given in the Supplementary Report on the Practice of Interment in Towns, and may be useful where a close approximation to the amount of ground is wanted.

WHITECHAPEL UNION.

Pop. 1839 = 35,000.

	Square feet in grave space.		Annual Deaths.		Period for re-opening graves.		Total area in square feet.
1. Adults	-	86	x	568	x	14 years	= 286,272
2. Young persons	21	x	81	x	10 "		= 6,610
3. Children	-	16	x	594	x	7 "	= 58,688
Totals				1123			351,470

HARROLD UNION.

Pop. 1839 = 35,000.

	Square feet in grave space.		Annual Deaths.		Period for re-opening graves.		Total area in square feet.
1. Adults	-	36	x	883	x	14 years	= 198,528
2. Young persons	21	x	16	x	10 "		= 3,360
3. Children	-	16	x	164	x	7 "	= 18,368
Totals				563			214,256

for any contingency that might arise, and such is evidently the view on which several boards have already acted.

XI.

Drainage has a material influence in rendering a soil more suitable for interments. Porous soils with a good natural drainage require little outlay, except what may be requisite to ensure dryness of the surface and of the roads and paths. 11. Drainage of the site.

Where denser soils, especially loams or clays, are selected, works of drainage are required, not only to improve the character of the soil, but to prevent water accumulating in the graves and vaults.

It has happened that from neglect of suitable precautions in this respect, corpses have been found floating in family vaults many years after they were buried.

Loose soils may be sufficiently drained by small drain tiles laid below the level of the bottom of the graves. These might be united into branches laid at a suitable depth beneath the paths and roads, and so to the outlet, which should be carried to such a point in the natural outfall that no injury may take place from the pollution of water used for domestic purposes. The distance of the lines of drain pipes from each other would vary with the nature of the soil. They would have to be placed closer together in dense than in porous soils. The distance might advantageously be fixed at some multiple of the length or breadth of the grave spaces.

In cases where, from local circumstances, no proper fall for drainage can be obtained, the ground might be drained by pumping, as is the case in a cemetery at Hull.

When clay soils are used, there is no way of draining the ground satisfactorily except by deep drainage below the lowest point of the grave, and by connecting each grave with the drain.

This has been effected in clay cemeteries by carrying a deep sewer through the ground, and beginning the interments close to the line of the sewer. Some broken stone or a drain tile is laid in the bottom of the grave, so as to leave a passage for the water to the sewer. The layers of stone or the tiles in the first series of graves are again connected with similar layers of stone or tiles in the second series, and so on with the third and succeeding series, and in this way the surface water, which would have otherwise accumulated in the graves, is removed. The passage of air through the broken clay soil filling the grave is facilitated, and the soil is gradually improved.

It has been stated that in a clay soil treated in this manner, decay has taken place in half the time it would otherwise have done.

XII.

12. Improvement of clay soils. In some clay cemeteries it has been customary to remove all the clay as soon as the grave has been dug, and to replace it by a more porous soil, which is used for filling up the grave.

It has also been proposed to mix burnt clay with the unburnt portion, or to sun-dry a quantity of the clay to be kept in reserve in a suitable part of the ground, and to be used for filling up the graves.

By the use of these methods it is possible to render clay grounds more suitable for burial than they are naturally. The absence of such precautions has led to the voluntary abandonment of clay burial grounds after considerable expense had been incurred in providing them.

XIII.

13. Roads and pathways to be constructed of hard materials and properly drained. As funerals take place at all seasons and in all states of the weather, and as mourners, not unfrequently predisposed to disease, are necessarily exposed to the influence of these conditions, it is of obvious importance that the roads and pathways leading to the graves should be constructed of hard materials, and so laid down as to have a good surface drainage. There should also be provision for the removal of surface water by small trapped gully shoots communicating with the drains underneath.

XIV.

14. Fencing of burial grounds. The best fencing for a burial ground is an open iron railing on dwarf wall, or a sunk fence. High walls are quite unnecessary; they increase the cost of the ground, interfere with the ventilation, and cut off any points of view which it might be desirable to preserve.

XV.

15. Planting of burial grounds. The use of suitable vegetation in burial grounds is advantageous as regards the public health, the economic use of the ground, and ornament.

Experience has shown that decay takes place sooner in a grave near certain fibrous rooted trees. In such situations it has been known to take place in about two-thirds of the time that has been required in the same burial ground beyond the influence of the tree roots.

Vegetation also absorbs the gases arising from decomposition, and diminishes the amount of them which would otherwise escape into the atmosphere.

For ornamental purposes the use of vegetation is obvious.

The best of all vegetation is grass, and great attention should be bestowed on keeping it in good condition.

Fresh turf is by far the most suitable covering for graves, unless they be planted with shrubs or flowers, and care should be taken to have a constant supply of it for laying down on a grave immediately after the interment.

There are certain shrubs and trees which have been found most suitable for cemeteries.

"Mr. Loudon recommends for planting in cemeteries trees chiefly of the fastigate growing kinds, which neither cover a large space with their branches, nor give too much shade when the sun shines, and which admit light and air to neutralize any mephitic effluvia. Of these, there are the oriental arbor vitæ, the evergreen cypress, the Swedish and Irish juniper, &c. For the same reason, trees of the narrow conical forms, such as the red cedar, and various pines and firs, are desirable. In advantageously situated cemeteries some of the larger trees, such as the cedar of Lebanon, the oriental plane, the purple beech, the dark yew, and the flowering ash, sycamores, mountain ash, hollies, thorns, and some species of oaks, such as the evergreen oak, the Italian oak, with flowering trees and shrubs, would find places in due proportion."*

It is of importance that trees and shrubs should not cover too large a portion of the burial ground, and that they should not be too closely planted, so as to interfere with the ventilation and with the sweep of the winds.

A suitable disposal of trees or shrubs along roads or pathways would afford shelter to persons visiting graves, or to funeral processions.

The size of the trees or shrubs selected should bear a proportion to the extent of the burial ground.

A suitable proportion of evergreens is needful to prevent the burial ground from becoming bare in winter.

XVI.

It is customary in the best regulated cemeteries not to bury the dead close to the boundary fence.

On many accounts this is advisable, as there is no law to prevent houses being built and wells sunk close to the ground. There is moreover a disposition to erect houses in the vicinity of ornamental cemeteries, and this practice has already endangered the public health from cemeteries in which interments are not conducted under suitable regulations. Much of the evil may be prevented by draining the ground in such a manner as to prevent the water passing into the subsoil of the neighbourhood, and by the adoption of proper regulations as to burial; but it would nevertheless be advisable to leave a space,

16. Interments should not take place too close to the cemetery boundary.

* Supplementary Report on the Practice of Interment in Towns.

a few feet or yards in width according to the size of the cemetery, between the fence and the nearest graves. This strip of ground would not be wasted, for part of it might be used as a walk, and part for ornamental shrubs. In perfectly open country districts where there is little or no chance of a cemetery being surrounded by houses, it would not be necessary to set apart such a belt of ground, at least so far as the protection of the public health might be concerned.

XVII.

17. Area of grave space.

The area to be set apart for each grave is a subject of great importance. It varies remarkably in different countries, and in different burial grounds in this country. The smallest area in use is that commonly adopted in overcrowded grave-yards; namely, a space no more than sufficient to hold the coffin, which, when deposited in the grave, touches adjoining coffins with its sides and ends.

About 18 square feet is the usual space under such circumstances, and it is very much smaller than the space set apart in any other country.

The largest space in use is in some parts of Austria, where the regulations prescribe 90 square feet as the area for an adult grave.

In some German cemeteries the grave space is about 50 square feet. In the best regulated churchyards and burial grounds in England it varies from 32 to 40 square feet, but these are only few in number. In the great majority of instances it has been necessary to reduce the area to the smallest possible space on account of the rapid increase of the population in proportion to the burial area available.

The most obvious result of this circumstance has been that the soil of burial grounds in towns has become a mass of corruption.

The proper area for a grave space may be determined by the following considerations:

- 1st. It should be large enough to admit of the grave being dug without risk of the sides falling in and exposing the coffins in adjoining graves.
- 2nd. It should be large enough to prevent any monument that may be erected from being thrown down or displaced by subsidence of the earth in digging an adjoining grave.
- 3rd. It should present a sufficient amount of surface to admit of the free access of the air through the soil to the top and sides of the coffin.
- 4th. It should ensure that for each interment there is a sufficient cubic space of earth for the absorption of the gases generated during decomposition and for their gradual diffusion in the atmosphere, or absorption by vegetation.

Placing graves too closely together prevents the accomplishment of these objects, and the result may be seen in many churchyards in the condition of the monuments, which are not unfrequently inclined in all directions from their original position, or entirely ruined.

The result of overcrowding in so far as regards the economical use of the ground is, that the soil becomes saturated with organic matter, and that decay of the coffin and corpse which is requisite before a grave should be re-opened is delayed. Entire skeletons of corpses too closely crowded together have been disinterred after the lapse of 23 years, even in a good soil. The use of a bone-house to accumulate undecayed bones has arisen from saturating the soil with organic matter.

The best experience abroad, as well as in this country, appears to indicate that each grave space should consist of the area in which the coffin is deposited, and about a foot of earth all round that area: which would give about thirty-six square feet as the grave space for a medium sized adult grave. The grave space for young persons would be about twenty-one square feet, and that for children about sixteen square feet.

XVIII.

The depth of a grave, and the thickness of soil placed over a coffin, have a material influence on the period of decay of the corpse, and also on the salubrity of the cemetery as a place of public resort. 18. Depth of graves.

In burial grounds where it has been the custom to cover the coffin with only a foot or two of earth, the effluvia escape readily, and can be smelt in the atmosphere even at some distance.

On the other hand, when a coffin is covered with ten or twelve feet of earth, the ingress of air is so interfered with that the period of decay is lengthened very considerably.

To prevent both occurrences, it appears to be the result of experience that a covering of four feet of earth over an adult coffin answers every purpose.

If a greater depth be required it necessitates a much longer delay in re-opening the ground, and consequently entails more expense.

A depth of three feet six inches of earth would be a sufficient covering for the coffin of a young person, and a covering three feet in depth would be enough for the coffin of a child.

XIX.

A fundamental principle of interments is that no more than one body be buried in any grave at one time. 19. No more than one body should be buried in a grave.

This principle is founded both on reason and experience. It is the only one which meets the requirements of public health

and public decency, and which at the same time permits the usage of the ground in perpetuity.

There are towns and districts in England that have adopted it from time immemorial, and, in some instances, it is the custom never to re-open a grave which has been buried in. On the other hand, in many large towns where the cemetery space has been too small, it has been the custom to dig deep graves and fill them up with dead. This has especially been the case where burial has been made a matter of traffic, and in some such instances as many as 50, 100, and 200 bodies have been deposited in a pit. In one such example the interments have been at the rate of above 80,000 per acre.

Ground which has been crowded with dead cannot be again used for interments until after a long period of time, and it is hence virtually lost, or taken away from the area of the cemetery.

If even two or three corpses be buried in the same grave, the period of decay of the lower ones is so much lengthened that the grave could not be re-opened till after two or three times the number of years which would be requisite for the dissolution of a single corpse.

On the ground of public decency, nothing is more unseemly than crowding the dead of a number of families into the same grave or pit, and it is a practice that has given rise to just cause of complaint on the part of the poor.

XX.

20. Exception in respect to family graves and vaults.

If any exception in the application of these principles be admissible, it is with respect to family vaults and graves. These private burial places, though used to a considerable extent in many parts of the country, are by no means universally adopted. They not unfrequently lead to acts of desecration. Their use has been promoted for pecuniary reasons, but there are still parts of the country where the dead of families are as far as possible buried side by side, instead of being placed in the same grave.

XXI.

21. Use of family burial plots should be encouraged, in place of family graves.

The burial boards might encourage this practice by disposing of family plots of ground in place of graves. This is already done in some burial grounds, and it is matter of absolute regulation in the cemetery at Frankfort on the Maine. The grave spaces included in the family plot of ground are used alternately, and thus the risk of injury is avoided.

XXII.

22. Precautions to be adopted where family

The use of a single vault or grave for the interment of different members of the same family has become a custom in many localities, and one which it will be necessary to allow

under such restrictions as shall protect the public health from injury. In regard to vaults not filled up with earth after each interment, it will be necessary that strong, impervious, metallic coffins be used.

In family graves eighteen inches of earth, at least, should be left between each coffin buried.

Corpses already interred in any family grave should never be exhumed for the purpose of enlarging or deepening such grave.

XXIII.

No grave which has once been buried in ought to be re-opened for a second interment until the decay of the coffin and corpse has been so far completed that nothing is left except perhaps a few fragments of the harder portions of the bones.

23. Graves not to be re-opened until decay is completed.

XXIV.

The number of years required for effecting this change is influenced by a variety of circumstances, such as the nature of the soil: the depth of the grave: the wood of the coffin: temperature: moisture: the age of the interred, &c.

Recent inquiries have shown that under the most favourable and perhaps exceptional circumstances as to soil, drainage, &c., an adult coffin with its contents will have disappeared in eight or ten years in this climate: while in wet clay ground at ten feet from the surface, and with unsuitable wood for the coffin, decay has not touched even the coffin, after the lapse of a century.

24. Circumstances influencing the period of decay. Time when decay is usually completed.

XXV.

Considering the great variety of circumstances under which cemeteries will no doubt be formed under the Acts of parliament, and the difference of soils in different localities, it would be impossible to fix a term for re-opening graves suitable in every case. In some cases it would be too short, and in others unnecessarily long.

25. No general rule as to period of decay can be given.

XXVI.

The principle to be kept in view is that already stated, that no grave should be disturbed until the coffin and corpse have disappeared by decomposition.

26. Principle to be observed in re-opening graves.

XXVII.

This event would probably take place in twelve or fourteen years in the better class of soils; and not in less time than twenty, or twenty-five years for wet or clay soils.

Assuming the adult ages at sixteen years and upwards, a

27. Time when graves might probably be re-opened in

different soils and for different ages. period of fourteen years would be applicable for re-opening adult graves in a good soil.

For young persons between the ages of five and sixteen years, the period for re-opening may be fixed at ten years, and for infants under five years, at one-half the time required for adults.

These periods are, however, subject to a condition rendered necessary by diversities of soil, &c., that if on re-opening a grave the remains previously interred be found undecayed, the grave should be again filled up.

XXVIII.

28. Dimensions of grave spaces for different ages.

In order to give effect to these precautions, it is necessary that the portion of the cemetery which may from time to time be devoted to interments, should be divided into grave spaces of *not less* than the following dimensions, namely:—

For adults, nine feet long, by four feet long.

For young persons, seven feet long, by three feet wide.

For children, five feet nine inches long, by two feet nine inches wide.

XXIX.

29. Each grave space to be marked on the ground, and on a plan and register.

Each grave space should be marked on the ground by a letter, numeral, or by some other convenient sign.

A plan of the cemetery should also be made, in which every grave space should be marked.

A register of graves is also requisite, in which should be entered all the grave spaces, together with the date of every interment, and the name and age of each occupant of a grave.

Every grave space should be marked on the plan and in the register by marks corresponding with those on the ground.

A grave should be dug as near as may be in the middle of the grave space.

XXX.

30. Grave to be filled up immediately after interment.

Every grave should be filled up with earth to the surface of the ground immediately after the interment of the coffin.

XXXI.

31. Grave to be covered over after interment.

The surface of each grave should be covered with fresh turf, or planted over as soon as possible after the interment; all superfluous earth should be removed, and the surface of the ground should be restored to its usual condition.

It is undesirable to raise a high mound over the grave, as is generally practised at present. Such mounds are unsightly; when too large they act in the same manner as if the grave had been dug deeper, and retard decay by obstructing the ingress of air. They should be made no higher than is neces-

sary to provide for the sinking of the earth, which when completed should restore the grave space to its natural level.

The use of grave mounds as marks is unnecessary, as the site of every grave should be marked in the manner already mentioned.

Various methods are in use for covering grave spaces; sometimes they are surrounded by a light railing and have shrubs or flowers planted on the surface; at others a narrow border of stone is used, and the ground within it is planted.

Vaults are generally covered by monuments or by flat stones, but the use of flat stones for graves should be discouraged. They retard decay for nearly three times the period that would be requisite if the grave were covered with turf or planted.

By far the most suitable covering is either grass or small shrubs and flowers. Vegetation of this character does not interfere with the ventilation of the burial ground, and it absorbs a large part of the gases resulting from decomposition.

XXXII.

The quality of the wood used for coffins has an important influence on the period within which a grave can be re-opened. Coffins made of resinous pine, oak, or hard woods, generally decay very slowly; while those made of common deal, elm, or other light porous woods decay rapidly.

32. Importance of the quality of the wood used for coffins.

Hard wood coffins last three or four times as long as those of common deal, and would hence occupy the grave for a much longer period. To show the importance of this in an economical point of view, it may be stated that if a town require a cemetery ten acres in extent to bury its dead in perpetuity, in deal coffins, it would be necessary to provide for the same town about thirty acres of surface to bury its dead in hard wood coffins.

XXXIII.

There is no greater disfigurement to a burial ground than large unsightly headstones. No expense incurred in rendering a ground attractive can be well laid out so long as such stones are used. This is so evident that in many of the more recently opened burial grounds considerable attention is paid to the form and size of the head-stones. There is no necessity for making head-stones high: they should be of small dimensions and of appropriate shape. Burial boards would do well to direct their attention to this subject, and indeed to the whole subject of funeral monuments, with the view of obtaining suitable designs.

33. Importance of improvements in monuments.

XXXIV.

It is highly probable that in large cities and towns some 34. Necessity

of burial
boards
making
arrange-
ments for
facilitating
interments.

arrangement will have to be made for the removal of the dead to cemeteries placed at a distance. The substitution of extra-mural sepulture for the existing practice will in some cases necessitate a larger outlay for the removal of the dead than is at present incurred. The increase of expense, though no object to the wealthier classes of society, may become considerable to the working classes, and may cause the retention of the dead in crowded dwelling-houses for a longer period than is consistent with health.

XXXV.

35. Burial
boards en-
abled to make
such arrange-
ments.

Section 41 of the Act provides for this contingency, by enabling burial boards to make arrangements for facilitating the conveyance of the dead from the place of death to the burial ground, and it also enables cemetery companies to make similar arrangements, in each case subject to suitable regulations under the Act.

XXXVI.

36. Improved
arrange-
ments al-
ready in use.

Arrangements are partially in use at present which appear to indicate the means of accomplishing the object in view. Sometimes a vehicle combining the hearse and omnibus is used, and there is sometimes a separate omnibus conveyance for the mourners to follow the hearse.

XXXVII.

37. Funeral
processions
in crowded
streets should
be dis-
couraged.

Funeral processions in the streets and crowded thoroughfares of large cities and towns should be discouraged. They detract from the solemnity of burial; they interfere with street traffic; they expose mourners to the gaze of passers by, and they add to the cost. Funeral processions should begin and end with the cemetery. The transit from the house to the cemetery should be accomplished without loss of time.

XXXVIII.

38. Water
conveyance.

Water conveyance, where obtainable, might also be advantageously adopted. A burial board has already provided a cemetery beside a canal, of which they intend to make use if they require it.

XXXIX.

39. Railway
conveyance.

Railway conveyance affords an economical means of removing the dead, and is about to be used in two or three instances. It has the advantage of enabling cemeteries to be placed at a greater distance without materially increasing the expense of conveyance. The exigencies of the usual traffic would probably render it necessary to remove the dead together with the mourners, at a specified hour, which would also diminish the cost. In making use of railways it would be

necessary to ensure precision of arrival of the corpses and mourners at the station from different districts. If a reception house were constructed at the terminus the dead might be brought to it before their removal by rail. A special carriage for the reception of the coffins would have to be provided for the railway.

XL.

In some instances arrangements may be made for conducting a number of interments together, and for having a common funeral service. In such cases special provision will have to be made for the free ventilation of the chapel, and to provide sufficient accommodation for mourners.

40. Utility of a common service at the cemetery.

XLI.

The use of a reception house would materially assist in the removal of the dead in certain cases.

41. Utility of reception houses.

XLII.

Section 42 of the incorporated clauses of the Metropolis Burials Act, gives power to the burial boards, with the approval of the vestries, to provide places for the reception and care of bodies previous to interment.

42. Burial boards may provide reception houses for the dead.

XLIII.

The use of such reception houses for the dead is common in the German cities, where they are intended to prevent injury to the health of the survivors by the undue retention of the corpse, and in some cases to prevent premature burial.

43. Reception houses in use abroad.

XLIV.

The cases where these reception houses would be advantageous for the health of the community, are thus indicated in the Supplementary Report on the Practice of Interment in Towns. "In a large proportion of cases in the metropolis, and in some of the manufacturing districts, one room serves for one family of the labouring classes: it is their bedroom; their kitchen, their wash-house, their sitting-room, and their dining-room; and when they do not follow any out-door occupation, it is frequently their workroom and their shop. In this one room they are born and live, and sleep and die, amidst the other inmates." From a statistical inquiry instituted and carried out at the expense of the Earl of Harrowby by Mr. Weld, secretary of the statistical society, "it appeared that 1,465 families of the labouring classes (in the inner ward of St. George's, Hanover-square) had for their residence 2,175 rooms and 2,510 beds."

44. Circumstances which point out the necessity of reception houses.

Similar conditions prevail very extensively, as has been shown by evidence collected from all parts of the country, and

given in the "Report on a General Scheme of Extramural Sepulture."

When death takes place in these overcrowded living-rooms the corpse is laid out and kept, until the period of interment, among the inmates of the room. It is sometimes stretched out on two chairs; or it occupies the only bed in the room: the inmates pursue their avocations around it: they eat beside it: the children play beside it: oftentimes the corpse is in an advanced state of putrefaction before it is removed for burial: offensive putrid effluvia are disengaged, and the spread of disease in consequence is no unfrequent occurrence. This is especially the case with infectious diseases.

During epidemics all these evils are of course greatly aggravated. Overcrowded living-rooms furnish the largest number of attacks and deaths, and there is the greatest risk of the dead being unduly retained among the living under the very circumstances where danger from such detention is the greatest. Instances are given in the report already cited of two and even three corpses lying in the house at the same time during the prevalence of the epidemic cholera of 1848-9.*

XLV.

45. Use of reception houses optional, and the consequent necessity for making them attractive.

The object of section 42 of the Act is to enable reception houses for the dead to be provided wherever the local circumstances similar to those mentioned, may appear to render such provision necessary. The use of these houses is optional on the part of the people; and hence it would be advisable, wherever they are established, to make them attractive both in external appearance, and in internal arrangements, and to conduct them in such a manner as may induce the people to use them.

XLVI.

46. Character of the architecture.

The architecture should be of an ecclesiastical character, and yet distinctive of the object of the building.

XLVII.

47. Materials for walls and floors should be impervious.

The internal walls and flooring should be covered with an impervious material which would admit of being easily washed and cleansed, without interfering with the current use of the building.

Glazed encaustic tiles would form the best and cheapest material for the purpose, as well as affording a ready means of ornament.

XLVIII.

48. Supports for the coffins, and

There should be suitable supports of galvanized iron, or of some similar material on which to place the coffins; and these

* Report on a General Scheme of Extramural Sepulture, p. 162.

supports should be so arranged as to prevent the appearance of crowding or packing the coffins together. their arrangement.

XLIX.

There should be a plentiful supply of fresh air, so as to keep up a constant and thorough ventilation. 49. Abundant ventilation necessary.

L.

The lighting of the interior should be arranged in such a manner as to be in conformity with the style of architecture and the uses of the structure. 50. Lighting of the interior.

LI.

In certain forms of the reception house the interior might be divided into separate crypts or chapels, to ensure the requisite privacy to persons desirous of visiting the remains of relatives. 51. Reception house may be divided into separate crypts or chapels.

LII.

Arrangements would have to be made by the burial board for the removal of corpses from dwellings to the reception house; for their care and decent treatment while deposited therein, and for their removal thence to the cemetery. 52. Arrangements necessary for removing corpses to and from the reception houses.

LIII.

The local position of reception houses would be determined by circumstances. In large cities, such as the metropolis, a number would probably be needed in places convenient for the population requiring them, and for the situation of the cemetery. Where removal of the dead to a distance by railway is necessary, the most convenient position for the reception house would probably be near the terminus. In certain cases it might be most convenient to have the reception house within the cemetery. 53. Position of reception house to be determined by local circumstances.

LIV.

The person in charge of the reception house should reside close to it. He would have to keep a register of the corpses deposited, and to conform strictly to the regulations for preserving the building in a clean and well ventilated condition, and for ensuring a decent and respectful treatment of the remains of the dead. 54. A register of bodies deposited to be kept.

*Appendix.**II. Regulations for conducting Interments in Burial Grounds provided under the Burial Acts 15 & 16 Vict. Cap. 85, and 16 & 17 Vict. Cap. 134.*

I.

The area of the burial ground should be under-drained to such depth and in such effectual manner as shall prevent the accumulation of water in any vault or grave therein.

II.

There should be a sufficiency of roads and pathways within the burial ground to afford access to the graves, and such roads and pathways are to be constructed of hard materials, and to be properly guttered and drained in such manner that all surface water shall be carried away.

III.

The whole area of the burial ground which may from time to time be used for interments is to be divided into grave spaces, in such manner that the position of every grave space may be readily distinguished.

IV.

A plan of the burial ground is to be made, on which every grave space shall be marked.

V.

A register of graves is to be kept, in which shall be registered every grave space in the burial ground, together with the name, age, and date of interment of every occupant of such grave.

VI.

Every grave space in the burial ground is to be designated by letters or numerals, or by some other convenient marks, which shall tally with similar marks designating such grave space on the plan of the burial ground and in the register of graves.

VII.

The grave space set apart for each person of the age of sixteen years and upwards shall be, at the least, 9 feet long, and 4 feet wide.

VIII.

The grave space set apart for each person between the ages of seven and sixteen years shall be, at the least, 7 feet long and 3 feet wide.

IX.

The grave space set apart for each child of seven years of age and under shall be, at the least, 5 feet 9 inches long and 2 feet 9 inches wide.

X.

Each grave shall be dug, as near as may be, in the middle of its grave space.

XI.

No more than one body shall be buried in any vault or grave, except in a vault or grave purchased for the exclusive use of a family.

XII.

No interment shall take place in any vault, unless the corpse be enclosed in an air-tight metallic coffin.

XIII.

When more than one body is interred in any grave purchased for the use of a family, a layer of earth 18 inches in thickness, at the least, shall be left between each coffin interred therein.

XIV.

No interment shall take place in the grave of any person of the age of sixteen years and upwards without a covering of earth four feet in thickness, at the least, measuring from the upper surface of the coffin to the ordinary level of the ground.

XV.

No interment shall take place in the grave of any person between the ages of seven and sixteen years without a covering of earth three feet six inches in thickness, at the least, measuring from the upper surface of the coffin to the ordinary level of the ground.

XVI.

No interment shall take place in the grave of any child of seven years of age and under without a covering of earth three feet in thickness, at the least, measuring from the upper surface of the coffin to the ordinary level of the ground.

XVII.

No grave in which an interment has taken place, except it be a vault or grave purchased for the use of a family, shall be re-opened for another interment until after the expiration of stated periods of time; that is to say,

No grave in which a person of the age of sixteen years and upwards has been buried shall be re-opened for another

Appendix.

interment until after fourteen years from the time when such person shall have been buried ;

No grave in which a person between the ages of seven and sixteen years has been buried shall be re-opened for another interment until after ten years from the time when such person shall have been buried :

No grave in which a child of the age of seven years and under has been buried shall be re-opened for another interment until after seven years from the time when such child shall have been buried :

But, if on re-opening any grave, the corpse last interred therein shall be found undecayed, the remains shall not be disturbed, but such grave shall be filled up again with earth, and shall not be used for another interment until the complete decay of such corpse shall have taken place.

XVIII.

Whenever a burial has taken place (except in a private vault), the grave shall be forthwith filled up with earth, and the surface shall be covered with fresh turf, or be planted with shrubs or other suitable vegetation, unless a monument is to be erected upon it ; but in no case shall the bare earth be left exposed.

XIX.

Care shall be taken that the grave spaces, monuments, roads, pathways, buildings, &c., and the whole surface of the burial ground, be kept in a proper state of neatness, and that nothing offensive to public decency be permitted within the ground.

III. *Regulations for Burial Grounds provided under the Acts 15 & 16 Vict. Cap. 85; 16 & 17 Vict. Cap. 134; 17 & 18 Vict. Cap. 87; 18 & 19 Vict. Cap. 128, &c.*

I.

The burial ground shall be effectually fenced, and, if necessary, under-drained to such a depth as will prevent water remaining in any grave or vault.

II.

The area to be used for graves shall be divided into grave-spaces, to be designated by convenient marks, so that the position of each may be readily determined, and a corresponding plan kept on which each grave-space shall be shown.

III.

The grave-spaces for the burial of persons above twelve years of age shall be at least 9 feet by 4 feet, and those for the burial of children under twelve years of age, 6 feet by 3 feet.

IV.

A register of graves shall be kept, in which the name, age, and date of burial in each shall be duly registered.

V.

No body shall be buried in any vault or walled grave, unless the coffin be separately entombed in an air-tight manner; that is, by properly cemented stone or brick-work, which shall never be disturbed.

VI.

One body only shall be buried in a grave at one time, unless the bodies be those of members of the same family.

VII.

No unwalled grave shall be reopened within fourteen years after the burial of a person above twelve years of age, or within eight years after the burial of a child under twelve years of age, unless to bury another member of the same

family, in which case a layer of earth not less than one foot thick shall be left undisturbed above the previously buried coffin; but if, on reopening any grave, the soil be found to be offensive, such soil shall not be disturbed, and in no case shall human remains be removed from the grave.

VIII.

No coffin shall be buried in any unwallled grave within four feet of the ordinary level of the ground, unless it contains the body of a child under twelve years, when it shall not be less than 3 feet below that level.

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17. Requisition to convene Ordinary, &c. Meeting of Members	-	-	-	per quire	0	2 6
18. Notice of Ordinary, &c. Meeting of Members	-	-	-	„	0	2 6
19. Notice of Members of Burial Board to Overseers of the Poor to pay Contribution from Poor Rates, with Counterpart, in books	-	-	-	- each	0	5 0
20. Yearly Statement of Auditors	-	-	-	per quire	0	5 0
4. Minute Book, bound in calf and lettered	-	-	-	-	1	5 0
5. Cash Book, bound in calf and lettered	-	-	-	-	0	16 0
6. Register of Burials, drawn embodying the requirements of the Act of Parliament:—	1 qr.	400 Names	-	-	0	13 0
„	2 qrs.	800	„	-	0	19 0
„	3 qrs.	1200	„	-	1	5 0
„	4 qrs.	1600	„	-	1	12 0
„	5 qrs.	2000	„	-	1	19 0
„	6 qrs.	2400	„	-	2	6 0
„	7 qrs.	2800	„	-	2	13 0
„	8 qrs.	3200	„	-	3	0 0
„	9 qrs.	3600	„	-	3	7 0
„	10 qrs.	4000	„	-	3	14 0
* * * The Register of Burials may be had of any size to ORDER, and the Name of the Burial Board printed in where required without extra charge. It may also be had printed on vellum or parchment.						
11. Index to the Register of Burials, in calf and lettered	-	-	-	-	0	16 0
7. Ledger, bound in calf and lettered	-	-	-	-	1	5 0
8. Certificates of Burial, in Book of 100	-	-	-	-	0	5 0
9. Letter Book, bound in calf and lettered	-	-	-	-	0	16 0
10. Contract and Bond for Works	-	-	-	-	0	1 0
21. Book for Entry of Copies of Contracts made by Burial Board	-	-	-	-	1	1 0
22. Book for Entry of Fees Received and Paid for Burials, &c.	-	-	-	-	1	5 0
Ditto	-	-	-	-	0	16 0

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BURIAL BOARDS BOOKS AND FORMS—continued.

		800 Grave Spaces -	- 0 16 0
12. Register of Public Graves in Consecrated Ground - -	{	1600 " " -	- 1 2 0
		2400 " " -	- 1 8 0
		3200 " " -	- 1 14 0
		4000 " " -	- 2 0 0
13. Register of Public Graves in Unconsecrated Ground -	{	800 Grave Spaces -	- 0 16 0
		1600 " " -	- 1 2 0
		2400 " " -	- 1 8 0
		3200 " " -	- 1 14 0
14. Register of Private Graves in Consecrated Ground - -	{	4000 " " -	- 2 0 0
		800 Grave Spaces -	- 0 16 0
		1600 " " -	- 1 2 0
		2400 " " -	- 1 8 0
15. Register of Private Graves in Unconsecrated Ground -	{	3200 " " -	- 1 14 0
		4000 " " -	- 2 0 0
		800 Grave Spaces -	- 0 16 0
		1600 " " -	- 1 2 0
	{	2400 " " -	- 1 8 0
		3200 " " -	- 1 14 0
		4000 " " -	- 2 0 0
		The 5th Regulation of the Home Secretary requires that every Grave Space shall be registered. The Sections and Numbers, as drawn on the plan, can be printed in and bound in a volume for reference by order of Shaw and Sons.	
16. Register of Transfer of Private Graves	- - -	- 0 16 0	
23. Ditto of Purchased Graves	- - -	- 1 11 6	
24. Ditto ditto	- - -	- 1 1 0	
25. Form of Mortgage of Poor Rates	- Parchment, each	0 1 0	
26. Form of Conveyance of Land	- - -	- 0 1 0	
27. Form of Conveyance of Land on Chief Rent	- - -	- 0 1 0	
28. Form of Grant of Exclusive Right of Burial, on parchment, and bound extra strong, 50 with Duplicates to be retained by Burial Board, printed with Name of Board, &c. -	{	2 2 0	
Ditto, 100 ditto	- - -	- 3 13 6	
Ditto, 250 ditto	- - -	- 6 6 0	
29. Notice to Burial Board of intended Interment	- per 100	0 4 0	
Ditto ditto printed with Name of Burial Board	per 250	0 10 0	
30. Summons of Special Meeting of Burial Board by two Members	- - - per quire	0 2 6	
31. Book of General Receipts by Burial Board, not being interment Fees, in Books of 250 with Name of Burial Board	{		
32. Books of Receipts with counterpart to be re-	{		
	{		

Seals may be had on application.

